REMITTITUR.

SUPREME COURT OF THE UNITED STATES.

No. ~~192.~~ 260 71

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED OCTOBER 17, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 492.

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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1 *Summons for relief.*

Supreme court, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK
ag'st
THE CENTRAL RAILROAD COMPANY OF NEW Jersey.

To the Central Railroad Company of New Jersey:

SIR: You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and serve a copy of your answer upon me at my office in the State Hall in the city of Albany, within twenty days after the service hereof, exclusive of the day of such service, and if you fail to answer the complaint as aforesaid, the plaintiffs will apply to the court for the relief demanded in the complaint.

Dated November 16, 1865.

JOHN COCHRANE,
Attorney General, for Plaintiffs.

2 Supreme court, city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK
ag'st
THE CENTRAL RAILROAD COMPANY OF NEW Jersey.

The People of the State of New York, by John Cochrane, their attorney general, complain against The Central Railroad Company of New Jersey, and respectfully show to the court that the defendant is a body corporate, duly organized, created, and existing under and by virtue of the laws of the State of New Jersey, and has its place of business in Jersey City and other places in said State of New Jersey, and also in the city of New York; that on the sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three, an arrangement was entered into between Benjamin F. Butler, Peter Augustus Jay, and Henry Seymour, commissioners duly appointed by the State of New York, and Theodore Frelinghuysen, James Parker, and Lucius Q. C. Elmore, commissioners duly appointed by the State of New Jersey, to settle the boundary line between those two States, which agreement was duly ratified and confirmed by both States, viz, by the State of New York, by an act of the legislature of that State, entitled "An act to confirm the agreement entered into by the commissioners appointed by this State, and commissioners appointed by the State of New Jersey," passed February 5, 1834, and by the State of New Jersey by a similar act, passed by the council and general assembly of that State on the 26th day of February, 1834, and which agreement was by
3 an act of Congress of the United States, approved June 28, 1834, assented to on the part of the United States, as hereinafter mentioned; and that, among other things contained and provided for in said agreement, was the third article thereof, reading as follow, viz: "Article third. The State of New York shall have and enjoy exclusive jurisdiction of and over all of the waters of the bay of New York, and of and over all the waters of the Hudson River, lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvel Creek, and of

and over the lands covered by the said waters to the low-water mark on the westerly or New Jersey side thereof, subject to the following rights of property, and of the jurisdiction of the State of New Jersey, that is to say:

The State of New Jersey shall have the exclusive right of property to and in the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

2. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks, and improvements made on the shore of the said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York, which now exist, or may hereafter be passed.

3 The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters, provided that the navigation be not obstructed or hindered.

And the plaintiffs further show to the court that, by the act of Congress approved June 28, 1834, it was enacted by the Senate and House of Representatives of the United States in Congress assembled, that the consent of the Congress was thereby given to the said agreement, and to each and every part and particle thereof, provided that noth-
4 ing therein contained should be construed to impair or in any manner affect any right or jurisdiction of the United States in and over the islands or waters which form the subject of said agreement, as by the said act of Congress, approved as aforesaid, reference being thereunto had, will more full appear.

And the plaintiffs further say that the said third article of said agreement is now of full and binding force upon the said two States, and the citizens, inhabitants and incorporated companies of each respectively, the same never having been amended, altered, or modified.

And the plaintiffs would further show to the court than the Central Railroad Company of New Jersey, defendants herein, without any grant, permit, or authority from the plaintiffs, and without any right, have, for five years last past and upwards, been infringing, encroaching upon, and violating the jurisdictional rights of the plaintiffs, and obstructing the navigation of the waters of said bay and river, by taking possession of, and appropriating to its own exclusive use, about eight hundred acres of the land and water situated next adjoining southerly the property used and occupied by the Morris Canal and Banking Company, and at the southerly extreme of the Jersey City wharf line, and all lying in one body west of the middle of the waters of the bay of New York and the Hudson River; the whole area so taken possession of being included in that part of the territory south of the mouth of Spuyten Duyvel Creek, over the lands and waters of which exclusive jurisdiction is by said third article given to the plaintiffs. That the said Central Railroad Company of New Jersey have, since they so took possession, displaced the waters over said land by erecting docks, piers, and other structures, and by filling in with earth, stone, rubbish, and other materials, and in this manner creating and forming solid ground of earth, stone, rubbish, and timber of about eight hundred acres. That the said defendant has connected this made ground with the main shore of New Jersey by a wooden
5 trestle-work about one mile in length, on which it has placed a railroad track for the passage of cars, and does now run its engines and railway cars to and from said made ground.

And the plaintiffs further say that much of the material with which

said made ground is formed consists of the dirt, filth, debris of Jersey City and other parts of New Jersey and New York, and that at times when westerly or northwesterly winds are prevailing, the exhalations and stench arising from said deposits are blown over the populated parts of the territories belonging to the plaintiffs, producing disagreeable odors, and affecting injuriously the sanitary condition of the inhabitants thereof, and of persons navigating the waters of the bay of New York and Hudson River.

And the plaintiffs further show to this court that the said Bay of New York and the said last-mentioned part of the Hudson River are arms of the sea in which the tide ebbs and flows; that previous to said filling in and erection of said structure the natural depth of the water thus encroached upon and displaced was from one to twenty-four feet, and were actually navigable by vessels of the largest size in most parts thereof, and were it not for the said filling in and structures of said defendants, would be so in many parts of the same, where those structures are, and in other parts of the same where said structures are, and made ground is formed, would be so navigable for vessels of three hundred tons burden and under, were it not for said structures and filling in.

And the plaintiffs aver and insist that the said bay and that part of Hudson River south of the mouth of Spuyten Duyvel Creek, is a public highway common to all of the people of the State of New York, and to the people of other parts of the United States, and that they, the said people of the State of New York, have the right to the use of those waters, as existing in their natural channel, and as they existed in the primitive spread and shape, not only for purposes of navigation, but also for fishing and other uses to which the said waters might be
6 put; and the plaintiffs further aver and insist that in so far as the said acts and structures of the defendant prevent the said people of the State of New York from using and enjoying said common and public right of navigation, fishing, and other uses to which the said waters might be put, to and including the low-water mark in and along the New Jersey shore thereof, the same is a common and public nuisance to the said people of the State of New York, formed and erected within their sovereign jurisdiction, and that they otherwise form and constitute a common and public nuisance by narrowing the channel of the said river and bay, and in other respects impairing and obstructing the use of those waters, and that as such nuisance, the plaintiffs are entitled to the interference of the honorable court to abate the same, and an injunction against the further continuance and extension thereof.

And the plaintiffs further say that although the said defendant has been frequently notified to desist from these encroachments upon the waters of the said Bay of New York and Hudson River, and these infringements upon the sovereign territorial right of the plaintiffs, yet the said defendant is now actually engaged with a large force of men, teams, and implements in filling in the waters of said bay and river under the said trestle-work, and at many points on each side thereof, with earth, stone, rubbish, and other materials, and design and intend thus to fill in the whole space of water between the said made ground above described and the eastern shore of the State of New Jersey, which when completed will form artificial and made ground to an amount of superficial area of about sixteen hundred acres in one body, and running into the bay easterly to a distance of about one and a half miles; all of which actings and doings of the defendant the plaintiffs claim and insist are infringements and encroachments upon their jurisdictional rights, are detrimental to the interests of the people of the State of New York, work a

serious injury to the harbor of New York, as against the spirit
7 and meaning of the third article of said agreement herein above set forth, and tends to the manifest wrong and injury of the plaintiffs.

Whereof the plaintiffs demand judgment that the said defendant be decreed to abate the nuisance hereinbefore set forth, and move the earth, stone, rubbish, timber, and other obstructions with which it has so filled in the said bay and river, and to place the said bay and river in the same condition, in all respects, as the same were in before the defendant had commenced its operation upon and in the said waters, and that the said defendant, its agents, officers, and employees, and all others acting under them, may be perpetually restrained by a writ of injunction issuing out of this court, from using and occupying the docks, made ground, railroad, trestle-work, and other improvements and erections, made by the defendant in the bay of New York and Hudson River, hereinbefore described; and also that the said defendant may be perpetually restrained from filling in with earth, stone, rubbish, timber, and other materials any part or portion of the waters of the Bay of New York and of the Hudson River west of Manhattan Island and to the south of the mouth of Spuyten Duyvel Creek, to the low-water mark on the easterly or New Jersey side thereof, and from obstructing or in any manner altering the natural lay or run of said waters, the shores thereof, and that it may be determined and decreed by this honorable court that the plaintiffs are entitled to the exclusive jurisdiction and right of sovereignty over all that part of the waters of said bay and river described in the third article of said agreement hereinabove contained, and over the lands covered by said water, and that the natural course of said bay and river and shores thereof, within the parts and territories described in said third article, cannot be obstructed or altered without the grant or consent of the plaintiffs, and that the plaintiffs may have such further or such other relief as the
8 nature of the case may require, and as shall be just and equitable, with costs of this action.

JOHN COCHRANE,
Attorney General for Plaintiffs.

STATE OF NEW YORK,
City and County of New York, ss:

John Swinburne, being duly sworn, doth depose and say that he is health officer of the State of New York, located at the quarantine on Staten Island; that he has read the foregoing complaint, and knows the contents thereof, and is also personally knowing to the facts therein alleged, and that the said complaint is true of his own knowledge, except as to the matters therein stated on the knowledge and belief of the plaintiffs, and as to those matters he believes it to be true.

JOHN SWINBURNE.

Sworn to before me this 23d day of December, 1865.

HENRY W. JOHNSON,
Notary Public.

Supreme court, city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK, plaintiffs,
against
THE CENTRAL RAILROAD COMPANY OF NEW Jersey, defendants.

These defendants, answering, but expressly declaring and in-
9 sisting that this honorable court has no jurisdiction over the person of these defendants, or over the subject of the action or pretended cause of action set forth in said complaint, and that the said complaint does not state facts sufficient to constitute a cause of action, for further answer to the said complaint says and admits that these defendants are a corporation organized, created, and existing, and having their place of business as stated in said complaint.

These defendants admit that an arrangement was entered into between the commissioners named in said complaint, duly appointed by the State of New York, and the commissioners named in said complaint, duly appointed by the State of New Jersey, to settle the boundary lines between said two States, which agreement was duly ratified and confirmed by each of said States at the time and in the manner mentioned in said complaint. That said agreement was by an act of Congress of the United States approved June 28th, 1854, and assented to on the part of the United States, as mentioned in said complaint.

But these defendants deny that the third article contained in the said agreement is correctly or truly set forth in said complaint; and these defendants deny that said article reads, or is in the words set forth in said complaint.

These defendants admit the passage of the act of Congress approved June 28th, 1854, mentioned in said complaint.

These defendants, further answering, say that the said agreement so entered into between the said commissioners of the said respective States, as aforesaid, and the agreement approved by the act of Congress aforesaid, is in the words and figures set forth in the Schedule "A," annexed hereto, which schedule these defendants pray may stand and be deemed and taken as a part of this answer of the defendants herein.

These defendants, further answering, admit and aver that the said agreement made between the said commissioners and approved
10 by Congress, as aforesaid, and the third and all the other articles and provisions contained therein are in full force and effect.

These defendants, further answering, say that they are authorized by their charter and the amendments and supplements thereto, and by the statutes and laws of the State of New Jersey in that behalf, duly enacted by the said State, to construct, own, equip, and run a railroad in the said State of New Jersey, from the Delaware River, at the westerly bounds of said State, to and upon the docks, wharves, piers, and improvements hereinafter mentioned, and to make, fill in, construct, use, occupy, possess, and enjoy the said road, dock, wharves, piers, and improvements, and own and acquire all the lands necessary therefor, and all the lands now used, possessed, or occupied by them.

These defendants, further answering, say that these defendants are the owners of the lands and premises hereinafter mentioned, on which these defendants have entered and made the docks, wharves, piers, and improvements, and trestle-work hereinafter mentioned and set forth.

These defendants, further answering, say that these defendants, being such owners as aforesaid, have entered upon and constructed certain

docks, wharves, piers, and improvements on the said land so owned by these defendants as aforesaid, and that these defendants were and are fully authorized and empowered to make the said docks, wharves, piers, and improvements in the manner in which the same are made and constructed or in process of construction, by the State of New Jersey, under and by virtue of the statutes of the said State in that behalf duly enacted and made by the legislature of said State, and by virtue of the charter of these defendants and the various amendments and supplements thereto duly enacted, passed, and granted by the legislature of the said State of New Jersey.

And these defendants, further answering, say that the said
11 docks, wharves, piers, and improvements above mentioned and used by these defendants as aforesaid are adjoining southerly the property owned and occupied by the Morris Canal and Banking Company, and at the southerly extremity of the Jersey City wharf line, which line is duly established under and by virtue of the laws of the State of New Jersey; that the said lands on which the said docks, wharves, piers, and improvements are made are all in one body and to the west of such wharf line, and west of the middle of the waters of the bay of New York and the Hudson River.

These defendants deny that they have by the taking possession of said lands or by the construction of said docks, wharves, piers, and improvements, all, any, or either of them, or in any other manner now or for five years last past or for any period of time infringed, encroached upon, or violated the jurisdictional rights of the plaintiffs, or obstructed the navigation of the waters of the said bay or river mentioned in said complaint, or any of them.

These defendants, further answering, say that said docks, wharves, piers, and improvements have been constructed by these defendants on the shore of the said State of New Jersey at a very great expense, and that all such lands so occupied by these defendants are lands the property, right, and title to which, and the jurisdiction over which and over the said docks, wharves, piers, and improvements in and by the said agreement or treaty so made between the States of New York and New Jersey as aforesaid, and the act of Congress aforesaid, was agreed to be vested in the State of New Jersey, and the exclusive jurisdiction over the said wharves, docks, piers, and improvements was by the said agreement or treaty, and the act of Congress aforesaid, declared and agreed to be vested and confirmed in and to the State of New Jersey. That in the erection of said docks, wharves, piers, and improvements on the shore of the State of New Jersey, the water upon so much of the
12 land in the said bay as is occupied by the said docks, wharves, piers, and improvements, and no more, was necessarily displaced. That said docks, wharves, piers, and improvements are a part of the said railroad of these defendants, and are the foundation and constitute its easterly terminus and depot, at the said Bay of New York, and the landing place for passengers and freight at and from which such passengers and freight are transported and delivered for carriage on the said road, and are essential and necessary to enable these defendants to conduct and carry on the business of said railroad, and they extend no further into the said bay than is necessary for the construction of wharves at which vessels may come and go for the reception and discharge of passengers and freight in the ordinary conduct of the business of landing and receiving such passengers and freight.

These defendants further say that said docks, wharves, piers, and improvements lie to the south of the buildings of Jersey City, and are,

as these defendants are informed and believe, within the limits of Jersey City, in the county of Hudson, and State of New Jersey; and these defendants say that an embankment of earth, stone, and timber has been constructed, made and filled in by these defendants, extending on the shore of said State of New Jersey as part of the said railroad, and constitutes a part of the said wharves, docks, piers, and improvement, and extending from the easterly terminus, aforesaid, on and over the flats and lowlands to the foot of the highlands in the rear thereof, on which embankment these defendants have placed a railroad track for the passage of the cars and engines of these defendants, and run their cars and engines over the same, to and upon said docks and wharves above mentioned, and must necessarily so do to reach the navigable parts of said bay or river.

These defendants believe that the embankment aforesaid, and the framework of timber about which such embankment is made, is the structure described in the said complaint as trestle-work, and ex-
13 tends over the flats and lowlands about one mile to the highlands as aforesaid.

These defendants further say that these defendants own the land on which said embankment is constructed, that said embankment forms an essential part of said railroad, and that said docks, wharves, piers, and improvements and embankment are all constructed on the shore of the State of New Jersey, on lands, the title to and the jurisdiction over which, by the said agreement or treaty, belong to the said State of New Jersey, and that said embankment is one of the improvements, the absolute jurisdiction over which, together with the absolute jurisdiction over said wharves, docks, piers, and improvements aforesaid was, by the said agreement or treaty, and of said act of Congress, declared vested and confirmed to the said State of New Jersey.

These defendants further say that the lands on which the said docks, wharves, and improvements and embankment aforesaid have been made and constructed by these defendants are the lands of these defendants, and that the defendants have, and that the grantor and grantors of said lands to these defendants and all the grantees of such grantor and grantors have, by the laws of the said State of New Jersey, and by statute and statutes duly passed and enacted in that behalf by the State of New Jersey, full right, power, and authority to make, erect, construct and maintain, use and enjoy all such docks, wharves, piers, improvements, and embankment on the said lands, as have been made, erected, and constructed by these defendants as aforesaid thereon.

These defendants, further answering, say, on their information and belief, that said docks, wharves, improvements and embankment, and the part thereof filled in by these defendants, do not and will not interfere with or obstruct the navigation of said river or bay, but, on the contrary thereof, as these defendants are informed and believe, the same will benefit, increase, and add to such navigation, and furnish increased and necessary facilities for such navigation.

14 These defendants admit that the bay of New York and Hudson River are arms of the sea, in which the tide ebbs and flows.

These defendants deny that all, or any part of the said lands so occupied by the said defendants as aforesaid, or over which said wharves, docks, or embankment are constructed, are under the laws of, or under or subject to the jurisdiction of, the State of New York, or under the jurisdiction of this honorable court.

The defendants further state that said wharves, docks, improvements, and embankment are filled in with earth, stone, rubbish, and other ma-

such as is commonly and rightfully used and are proper to be filling in docks and wharves, and making such improvements ... embankment.

These defendants deny each and every allegation in the said complaint contained not hereinbefore expressly admitted.

JNO. C. DIMMICK,
Att'y for Def'ts.

CITY AND COUNTY OF NEW YORK, *ss:*

Samuel Knox, being duly sworn, deposes and says that he is the secretary of the Central Railroad Company of New Jersey, the defendants in this action; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL KNOX.

Sworn to before me this 3d day of April, 1868.

CH'S E. HOPE,
Notary Public, New York.

15

SCHEDULE A.

Agreement made between the commissioners on the part of the State of New York, and the commissioners on the part of the State of New Jersey, relative to the boundary line between the two States.

Agreement made and entered into by and between Benjamin F. Butler, Peter Augustus Jay, and Henry Seymour, commissioners duly appointed on the part and behalf of the State of New York, in pursuance of an act of the legislature of the said State entitled "An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey," passed January 18, 1833, of the one part, and Theodore Frelinghuysen, James Parker, and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the State of New Jersey, in pursuance of an act of the legislature of the said State, entitled "An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York," passed February 6th, 1833, of the other part.

ARTICLE I.

The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay, to the main sea, except as hereinafter otherwise particularly mentioned.

ARTICLE II.

The State of New York shall retain its present jurisdiction of and over Bedloe's and Ellis' Islands, and shall also retain exclusive
16 jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that State.

ARTICLE III.

The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the waters of Hudson River lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvel Creek, and of and over the lands covered by the said waters, to the low-water mark on the westerly or New Jersey side thereof, subject to the following rights of property, and of jurisdiction of the State of New Jersey; that is to say:

1. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

2. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks, and improvements made, and to be made, on the shore of the said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State of New York, which now exist, or which may hereafter be passed.

3. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters, provided that the navigation be not obstructed or hindered.

ARTICLE IV.

The State of New York shall have exclusive jurisdiction of and
17 over the waters of the Kill Van Kull, between Staten Island and New Jersey, to the western end of Shooter's Island, in respect to such quarantine laws and laws relating to passengers as now exist, or may hereafter be passed, under the authority of that State, and for executing the same; and the said State shall also have exclusive jurisdiction, for the like purposes, of and over the waters of the sound from the westernmost end of Shooter's Island to Woodbridge Creek, as to all vessels bound to any port in the said State of New York.

ARTICLE V.

The State of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge Creek, and of and over all the waters of Raritan Bay lying westward of a line drawn from the light-house at Princess Bay to the mouth of Mattavan Creek, subject to the following rights of property, and of jurisdiction of the State of New York:

1. The State of New York shall have the exclusive right of property in and to the land under water lying between the middle of the said waters and Staten Island.

2. The State of New York shall have the exclusive jurisdiction of and over the wharves, docks, and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore, or fastened to any such wharf or docks, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State of New Jersey, which now exist, or which may hereafter be passed.

3. The State of New York shall have the exclusive right of regulating

the fisheries between the shore of Staten Island and the middle of the said waters, provided that the navigation of the said waters be not obstructed or hindered.

18 ARTICLE VI.

Criminal process, issued under the authority of the State of New Jersey, against any person accused of an offence committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid, or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the third article, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State, to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New York, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New York, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New York.

ARTICLE VII.

Criminal process, issued under the authority of the State of New York, against any person accused of an offence committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid, or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the fifth article, and also civil process issued under the authority of the State of New York against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

19 ARTICLE VIII.

This agreement shall become binding on the two States when confirmed by the legislatures thereof respectively, and when approved by the Congress of the United States.

Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that State, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that State) at the city of New York, this sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-eighth.

(Signed) B. F. BUTLER.
PETER AUGUSTUS JAY.
HENRY SEYMOUR.
THEO. FRELINGHUYSEN.
JAMES PARKER.
LUCIUS Q. C. ELMER.

New York supreme court, city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK, plaintiffs, *against* THE CENTRAL RAILROAD COMPANY OF NEW Jersey, defendants. } Case.

This action was tried before his honor Justice Sutherland, at a special term held at the City Hall in the city of New York, on the 22d day of October, 1868.

20 The plaintiffs' counsel called as a witness—

MOREAU MORRIS, who, being duly sworn, testified as follows:

Q. Are you a physician?
A. I am.
Q. What position do you occupy officially in the city?
A. Sanitary inspector in the board of health.
Q. Are you also inspector under the mayor?
A. No, sir.
Q. Have you acted as health officer?
A. Yes.
Q. Under what authority?
A. Under the authority of the mayor, at a former period, as health commissioner.
Q. Are you an assistant inspector?
A. I am inspector.
Q. How long have you held that position?
A. Ever since the board was organized.
Q. When was that?
A. In 1865.
Q. Tell me what your duties are in reference to the state of things in the harbor?
A. To take cognizance of anything that affects the health of the people.
Q. Anything affecting the public health?
A. Yes.
Q. You are an inspector for that purpose?
A. Yes.
Q. To examine into such cases and the causes?
A. That is my duty.
Q. Had you also some duties to discharge with reference to the cattle disease this last year?
A. Yes; I am assistant commissioner for the State.
Q. I ask you because that has necessitated you to cross to Communipaw several times?
A. Yes, frequently.
21 Q. What is the title of the office?
A. Assistant State commissioner, with reference to the cattle disease.
Q. You have had occasion to go frequently to Communipaw to attend to the duties of your office?
A. Yes.
Q. During the last summer?
A. During this past summer for the last nine or ten weeks.

Q. Had you occasion to go over there before that, the last year, or the year before?

A. No, sir.

Q. Tell me whether or not you discovered any offensive odor coming from the filling in of the Central Railroad Company at the place where they are filing out.

(Objected to; overruled; defendants excepted.)

A. On my first visit over there I discovered a very offensive odor after landing at Communipaw Ferry, and made enquiry what it was.

Q. Did you satisfy yourself from where it came?

A. Yes.

Q. From what place?

A. That it came from the ground adjacent and about the ferry.

Q. Being filled in around the ferry?

A. Yes.

Q. That is called the Long Dock?

A. Yes.

Q. The dock of the New Jersey Central Railroad Company?

A. That is, the dock and its surroundings.

Q. You found it a very offensive odor?

A. Yes.

Q. How many times did you have occasion to go there?

A. I don't recollect the number of times; but I have been, I suppose, fifteen times.

22 Q. State whether or not you always found it in this condition.

A. Yes, always in this condition; so much so as to occasion remark on each visit. If it had been in the city of New York I should have examined it more particularly.

Q. How far distant from the New Jersey shore can you smell this odor? How near to this shore?

A. I did not discover it until I landed at the ferry.

Q. Did you ever smell it from the Battery?

A. Not that I know of.

Q. Can you give us some description of the intensity of that odor—the character of it?

A. It was so offensive an odor that it was observed at once upon landing, and drew my attention to it, to know what it was; something so unusual because I could not see any apparent cause, any accumulation, and it led me to enquire what caused so much odor.

Q. You ascertained it by means of inquiry?

A. Yes. I then examined some of the ground about.

Q. What did you find the material to be?

A. I found the material to be principally street dirt mixed with garbage and decaying matter, which, mixed together, gave off the most offensive odors. I noticed it particularly when they were making some change in the grade, taking up the filling in. I noticed there were some decaying animal matter quite below the surface, showing it had been filled in some time previous.

Q. Do you know whether or not that odor was injurious to health?

A. I should say it was decidedly. The same character of filling in has been objected to in the streets of New York by the board of health, under my recommendation.

Q. It is not permitted here?

A. It is not.

Q. State whether this odor would be injurious to health to vessels navigating in that vicinity.

23 A. If they were confined to that locality for any length of time.

Q. In passing there?

A. Yes; the exhalations from such material are such that produce typhoid and typhus fever, and fevers of a low grade.

Q. Typhoid and typhus fevers would be the consequences?

A. Yes.

Q. Has your attention been called to any cases of diseases occurring in that vicinity.

A. I was so informed.

Q. You don't know of your own knowledge?

A. No, sir.

Q. State whether or not it would produce diarrhœa.

A. It would be apt to; that is one of the diseases.

Cross-examined:

Q. The diseases are produced by inhaling this vicious atmosphere?

A. Yes.

Q. You do not mean to express as an opinion that it is dangerous for a person in a vessel sailing along the river?

A. No, sir; I did not state it so. My answer, I believe, was, that vessels remaining in dock any length of time—not passing up and down.

Re-direct:

Q. A vessel at anchor over night, near by in the same vicinity?

A. That comes under the same answer.

Q. It is a fact that vessels are at anchor in that vicinity a great deal?

A. I have seen them frequently there.

JOHN SWINBURNE, called for plaintiffs, being sworn, testified as follows:

24 Q. Are you the health officer of this port?

A. I am.

Q. How long have you been so?

A. Nearly five years.

Q. Where is your headquarters?

A. Quarantine, Staten Island.

Q. As such health officer, do you have occasion to understand what is going around in different parts of the bay?

A. As such health officer, I make it my business to become acquainted with the whole bay, in order to get at this subject of quarantine.

Q. You have seen the place where the New Jersey C. R. R. has built out into the bay its structure and pier at the end?

A. Yes.

Q. Have you seen that frequently?

A. I have.

Q. How long have you been acquainted with it?

A. I think it was in 1865 I first drew the attention of the attorney general to the subject, or 1864.

Q. I want to know what you have observed on the subject of the offensive odor that is charged to come from the filling in of the Central R. R. Co. at that place?

A. The first season in 1865 I noticed it, and in the fall of 1866, in the cholera season. I was there two or three times each year.

Q. What did you notice on the subject?

A. I noticed the most horrible smell ever encountered by any human being. It is not the decomposition of animal matter alone, or vegetable

matter alone, but it is a combination of both. It is the most sickening and nauseating smell I ever encountered.

Q. How far distant have you observed that smell?

A. I have smelt it as far as the Battery, when the wind was from the west; that is, a smell similar to this. During those seasons there were millions of flies congregated there to get the decaying matter.

25 Q. They congregated at what place?

A. On the ground, and in the building surrounding.

Q. State whether you satisfied yourself that the offensive smell came from the filling in there.

A. Yes; no question about it. I saw at least a dozen of boats filled with the same offensive matter before it decayed; then I saw it in places partially decayed, and also the ground that had been filled in.

Q. What filling was it?

A. Street dirt, garbage, dead dogs and cats; all sorts of vegetable matter, all sorts of stuff thrown in the streets, both animal and vegetable matter. I should think there were thirty or forty acres of that last season.

Q. You have perceived it as far as the Battery when the winds are west?

A. Yes.

Q. Have you discovered it out in the bay when sailing?

A. In the summer you can smell it out in the stream, several rods from the structure. Even the other day I saw the same kind of dirt that I, as a member of the board of health, have always voted to exclude from the city.

Q. You are a member of the board of health here?

A. Yes, and have been ever since the organization of the board.

Q. How long have you been a practicing physician?

A. I graduated in 1846, and have practiced ever since.

Q. In your judgment, as a physician, what is the effect upon health from inhaling this odor?

A. It produces diarrhœa diseases, and also typhoid and typhus, and also those classes of diseases that Dr. Morris described.

Q. How far off from the place where this is dumped would it be likely to produce an effect?

A. I should think anywhere in the vicinity of the shore—vessels anchored.

Q. Would vessels anchored in the stream be within its influence?

26 A. Yes; vessels coming from foreign ports might be subject to its influences.

Q. Would vessels from foreign ports be more likely to be affected by it than others anchored in the stream?

A. Vessels coming from ports where diseases like yellow fever prevail would be more likely to be influenced.

Q. Have those vessels ever to anchor in the stream?

A. They sometimes anchor there; many of them discharge their cargoes there, in the early part of the year, instead of discharging at the docks.

Q. What tonnage vessels could navigate the bay where it is three or four feet deep at low tide?

A. I suppose vessels ranging from 20 to 80 tons; it depends on the flatness of the bottom.

Q. What water do they draw?

A. From 3 to 6 feet; the Hudson River boats do not draw more than 4½ to 5 feet of water.

(It was then agreed by the counsel that either party might refer to the Coast Survey map, on the trial, or on the argument of this cause, and also that the figures on the map represent the low-water mark.)

The plaintiffs thereupon rested, and the counsel for the defendants thereupon moved to dismiss the complaint, on the ground—

1st. That the court had no jurisdiction over the person of the defendant.

2d. On the ground that the court had no jurisdiction over the subject matter of the action.

The court denied the motion, to which decision of the court the counsel for the defendants then and there duly excepted.

JACOB M. CLARK, called and sworn for defendant, testified as follows:

27 Q. You are an engineer?

A. I am.

Q. In the employ of the defendant?

A. Yes.

Q. Have you made a map representing the premises occupied by the defendant—their wharves and road on the Jersey shore?

A. I have.

(Map marked Defendant's Exhibit No. 4.)

Q. That represents the railroad and the bulkheads, and the piers extending from them?

A. Yes.

Q. Give us the depth of water extending along from the line along the railroad down to *to* the bulkhead?

A. In 1863, about the time the work was commenced, the depth of the water from the shore out to the bulkhead, mean low water, was from one foot and nine-tenths to four feet one-tenth out to the then existing canal basin.

Q. At different places?

A. Yes.

Q. Give the depth along the line of the R. R. down to the bulkhead?

A. That is what I have just given.

Q. What is the depth along the bulkhead?

A. Along the bulkhead south line, for 2,400 feet before we reach the front bulkhead, the depths are from 4½ to 12 4-10 feet; that is, the exterior line of the bulkhead.

Q. That is where the piers begin?

A. Yes.

Q. Is the exterior line of that bulkhead beyond or within the exterior line of the Jersey City bulkheads?

A. Slightly within it; not beyond it, at all events.

Q. What is the depth along the piers that run out?

A. The depth of the south pier is from 12 4-10 feet to 19 9-10 feet; 12 feet at the beginning of the pier, and 19 9-10 at the easterly end.

28 The north pier varies from 3 9-10 feet immediately at the end of the bulkhead to 19 4-10 feet at the end of the pier.

Q. Are the exterior lines of the piers within or beyond the Jersey City piers?

A. They are within those lines; they are within the Jersey shore.

(Counsel for plaintiff objected to a comparison with the Jersey shore. Objection overruled; plaintiff excepted.)

Cross-examination:

Q. You say that the depth of water along the railway at the time it was completed was one foot 9-10 to 4 1-10 feet?

A. At the time the work was commenced.

Q. When was that?

A. In 1863; that was the time we surveyed for locating the line; it was in December, 1862.

Q. You mean that that was the depth of water before you began to fill in at all?

A. Yes.

Q. When you speak of these different measurements, do you mean to state that it was gradual all the way, or that it varied from different places?

A. I mean to state just what I did say.

Q. At different places, those were the extreme measurements?

A. Yes.

Q. For instance, in the middle of that distance out, about how deep was the water?

A. 4 1-10 feet about the middle.

Q. And it remained that depth all the way out?

A. I said that in the middle it was 4 1-10 feet.

Q. Did it continue about that depth all the way out?

A. It grew a little deeper as it went out.

Q. What was the depth out about 20 rods from the shore?

29 A. These footings were not as near to each other as 20 rods.

Q. What was the depth about 800 feet from the shore?

A. $3\frac{1}{2}$ feet.

Q. Where was the place 1 1-10 feet deep?

A. There was no such place.

Q. Didn't you state that the depth was 1 9-10 feet?

A. Yes.

Q. Where was that?

A. That was at the shore.

Q. Tell the length of the R. R. from the shore to the bulkhead?

A. From the shore to the bulkhead it is a little over a mile; a mile and 105 feet.

Q. The bulkhead is how long?

A. 50 feet wide, and built transversely to the railroad.

Q. What is the whole length of it in its longest direction?

A. About 1,000 feet, from north to south.

Q. Didn't you state, before that, it was 2,400 feet along the bulkhead?

A. That is along the south line bulkhead.

Q. What is the length of the bulkhead on the south line?

A. It is 2,400 feet parallel with the railroad.

Q. How long is the longest pier that you have from that bulkhead out into the river?

A. A little over 400 feet.

Q. In running along the bulkhead, on the south side, this 2,400 feet, you say that it varies from $12\frac{4}{10}$ to $19\frac{9}{10}$ feet?

A. No, sir.

Q. How then?

A. Along the south side of the pier, before passing the bulkhead.

Q. Is that a gradual increase of depth, or does it vary in different places?

30 A. It increases gradually, but not regularly, from the bulkhead line to the end of the pier.

Q. You state that at the end of the pier it is $19\frac{4}{10}$ feet deep?
A. $19\frac{2}{10}$ at the end of the south pier.
Q. Do you mean to state that that was the depth of water before you began to fill in at all?
A. That is the depth at present.
Q. Hasn't it been filled in?
A. No, sir.
Q. Can you tell what the depth of water was before that pier was constructed?
A. I cannot.
Q. Don't you know that by the Coast Survey it was ascertained to be $28\frac{1}{2}$ feet at that point?
A. I have not seen any such map.
(Defendant's counsel put in evidence deed from Charles G. Lisson to the defendant, dated January 27, 1863.)

By Mr. Dimmick:

Q. What lands along the shore does that deed cover?
A. That deed covers all the land along the shore from Van Horne Creek to the railroad, and from the mouth of Mill Creek to the line of Jenkin street, except one range of blocks.
Q. What is the depth along the shore embraced in that deed?
A. In some places fifty-three feet wide above high water—some places five feet wide; in some places there was a tract of meadow and upland.
Q. Running all the way two to three feet?
31 A. No place less than three feet along the shore, and in some places taking a tract of meadow land.
(Defendant's counsel put in evidence deed from Mirmon and wife to defendant, dated April 8th, 1863.)
Q. What land does that deed embrace?
A. It is a lot of land, not included in Mr. Lisson's deed, at the foot of Communipaw lane, about half an acre, with the riparian right.
Q. How far did it extend along the bank?
A. About seventy feet.
Q. Did it run back in the upland?
A. Yes. There was a house on it.
Q. That embraces a part of the land between Van Horne's Creek and Jenkin street, not in the Lisson deed?
A. Yes.
(Defendant's counsel put in evidence deed from Van Horne to the Central Railroad Company, dated May 27th.)
Q. What does that embrace?
A. That is for the right of way, about 700 feet, from Mrs. Van Horne's land to the shore, and they have an undivided half of the riparian right from the railroad to the Mill Creek.
Q. So the Van Horne deed takes in the shore from the railway up to the Mill Creek?
A. Yes.
Q. It embraces about how much in width?
A. It is three feet wide and the riparian right.
(Defendant's counsel put in evidence deed from Vance and wife to the Central R. R. Co., dated April 7th, 1866.)
32 Q. What does that embrace?
A. That embraces twenty-five lots of land under water, in the Hill and Townsend tract, not included in the Lisson deed, north of Mill Creek.

Q. That embraces part of the land not included in the Lisson deed?
A. Yes.
Q. Does that take the shore?
A. Yes; I presume it does.
(It is admitted that the defendants have purchased the land along the shore to where they have filled out from the Van Horne's Creek to Washington street, with the riparian rights of the owners, whatever they had.)
WITNESS. Those deeds which convey only the riparian right are generally a strip of land one, two, or three feet above high-water mark.
(It is understood that this property is purchased from persons in possession claiming to be owners of land along the shore.)
Q. The American Dock Company had acquired the right in the same way?
A. The dock company had acquired the right from Van Horne's Creek to the south side of Craven Point.
Q. From the persons in possession claiming to be owners?
A. Yes.
Q. The dock company conveyed to the defendants all the strip of land on this map?
A. The railroad company conveyed to the dock company all these lands of which I have been speaking; the dock company afterwards conveyed back to the railroad company a certain tract represented by a brown line on this map, Exhibit No. 5.

33 Q. That represents the lands now owned by the railroad company which were conveyed to them by the dock company?
A. Yes.
Q. That embraces the bulkhead and the road as now built?
A. Yes; these conveyances from the dock company embraces the bulkhead and the railroad as they now are.
Q. And it embraces considerable more that is not yet filled up?
A. Yes.
Q. How is this railroad track constructed?
A. From the shore to the bulkhead, it was originally built upon piles and afterwards filled up; the track is now filled up.
Q. With this material spoken of?
A. Partly with street dirt, and partly with gravel and clay brought from the uplands of New Jersey.
Q. Is it a single track now?
A. No, sir; there are three tracks all the way, and part of the way four.

By Mr. Parker:

Q. The whole extent of the structure is a little over a mile and a half from the shore to the eastern end of the pier?
A. No, sir; it will be a mile and 500 feet.
Q. What did you state was the extent of the railroad until you get to the bulkhead?
A. A mile.
Q. Then the bulkhead on the south side is about 2,400 feet?
A. That is the bulkhead on the south side of the railroad and parallel with it.
Q. The bulkhead extends 2,400 feet from the south side on the eastern end of the railroad?
A. No, sir.

34 Q. What is the measurement of the bulkhead on the south side?

A. On the south side it is 2,400 feet.

Q. It runs back of the eastern end of the railroad?

A. Yes; the limit of the 2,400 feet comes to the front bulkhead line, which is to the end of the pier, a mile and 105 feet.

Q. You make the greatest extent from the shore into the river a mile and 500 feet?

A. Yes.

(Defendant's counsel put in evidence authenticated receipt from the treasurer of New Jersey, showing how some charges were paid that were made against the defendant, marked Defendant's Exhibit No. 6.)

CHARLES G. LISSON, called for defendants, testified as follows:

Q. What is your business?

A. Mostly real estate for the last 25 years.

Q. You are familiar with the property of the N. J. Central R. R. Co. and the American Dock Co.?

A. Yes; I negotiated all the purchases.

Q. Are you familiar with this filling in over there?

A. Yes; I had charge of it the first year.

Q. What is the character of the material used for filling in there?

A. It has been the sweepings from the city: coal ashes, and the rubbish that comes from the streets, exclusive of the manure. The manure is put separate and sold.

Q. Is that the material commonly used for filling in?

A. Yes.

Q. Where?

A. Most of it has been used in New York, Jersey City, and Brooklyn, for filling in; they have used a great deal of it in Hoboken; at
35 the Long Dock, Jersey City, they have used a great deal of it; the N. J. Railroad Co., the Morris Canal, and the Central Railroad Co. have all used it.

Q. You say it is used in New York for that purpose?

A. Yes; when I made the contract it was used for filling in at the North and East Rivers; I saw them using it on the North River side a short time ago; the Battery is mostly filled in with that material.

Cross-examination:

Q. Are you in the employment of the company?

A. I am not now.

Q. You were?

A. Yes.

Q. It was for the company that you made these purchases of this stuff?

A. Yes.

Q. This company have filled it in there?

A. Yes.

Q. To what extent did you purchase?

A. In the first place I made a contract to do it for so much a yard.

Q. Did you purchase all that was bought and used for filling in there?

A. All that has been used for the Central Railroad Co. I negotiated in the first place.

Q. This stuff is taken across in scows and dumped there?

A. Yes.

Q. You say that the manure is excluded?

A. The manure they put away.

Q. Do you mean to say that there is no animal and vegetable matter included in this stuff that is used there for filling in?

A. No, sir; the vegetable matter comes from the houses in the city, where it is thrown into barrels and ash-boxes.

36 Q. Don't you know there was mixed in with this filling in animal and vegetable matter?

A. Yes; what comes from the houses in the city.

Q. Do you know that this filling you bought and put in there included animal and vegetable matter?

A. I don't know about the animal matter, I know it included vegetable matter.

Q. You don't know that it included cats and dogs, and dead animals?

A. I do not.

Q. Did you ever encounter that terrible smell they have described?

A. Yes.

Q. You have encountered it pretty often?

A. I have.

Q. It throws off a very offensive smell?

A. In hot weather it ferments in the boats going over.

Q. Do you mean to say that they have used one particle of it in filling in the Battery?

A. I do, and they use it now on both sides of New York, where there is a large amount of filling in.

Re-direct:

Q. You know what they do about using it in New York?

A. Yes; I have seen them do it.

Q. Have you known any one person to be injured by it?

A. No, sir; I have known men to work in this very stuff without getting sick, and I have known men to go there out of health, and become perfectly healthy. The same hands are working there all the time.

By Mr. Parker:

Q. Don't you know it was very sickly all around the shore after these deposits were made?

A. No, sir.

37 Q. Complaints of diarrhœa, typhoid, and typhus fevers?

A. No, sir; I never knew anything taken from it in any shape.

Q. Do you know the fact that there was a great deal of sickness in the vicinity of the shore?

A. I am not aware of it.

The counsel for the defendants then read in evidence the charter of the defendants, consisting of various acts passed by the legislature of the State of New Jersey, marked Defendant's Exhibit No. 1, a copy whereof is hereunto annexed.

The counsel for the defendants then read in evidence the charter of the American Dock and Improvement Company, marked Exhibit No. 2, a copy of which is hereunto annexed.

The counsel for the defendants then read in evidence an exemplified copy of the acceptance by the Central Railroad Company of the supplements in their charter, marked Exhibit No. 3, a copy of which is hereto annexed.

The defendant's counsel then put in evidence map marked "Exhibit No. 4," and proved that the same correctly represented the railroad, bulkhead, and piers constructed by the defendants, and referred to in

the pleadings in this action, and the location thereof, a copy of which said Exhibit No. 4 is hereto annexed.

The defendant's counsel put in evidence a map marked "Exhibit No. 5," and proved that the same correctly represented the lands conveyed to the defendants by the American Dock and Improvement Company, and the location thereof, which lands so conveyed to the defend-
38 ants as last aforesaid are designated by brown lines on said map, a copy of which said Exhibit No. 5 is hereto annexed.

The defendants' counsel also put in evidence a report from the treasurer of New Jersey, showing the payment of certain moneys mentioned therein to the State of New Jersey, marked Exhibit No. 6, a copy of which is hereto annexed.

JAMES J. WINANT, called and sworn for defendant, testified as follows:

Q. You are in the employ of the defendant?

A. Yes.

Q. Have been how long?

A. About four years.

Q. In what capacity are you employed there?

A. I am superintendent of the ferry at present.

Q. You are perfectly familiar with the business carried on at this bulkhead by the defendants?

A. Yes.

Q. They use it for the purposes of a railroad?

A. Railroad and ferry-boats.

Q. Passengers are received and ferried over to New York?

A. Yes.

Q. How is it as to its capacity for the business of that road?

A. It is inadequate for the road; they have not piers enough for their boats.

Q. The whole thing is inadequate at present for the business of the road?

A. Yes.

Q. You know where this is built, to what depth of water?

A. I have not measured it particularly, but I know pretty near the depth.

Q. What depth of water is required for the purposes of the ferry?

39 A. From seven to nine feet; at low water the boats draw about eight feet of water.

Q. Is the water equal along this pier in front?

A. It may be higher on the south end than at the upper end.

Q. These piers that run out in front, are they an essential and necessary part of the structures for the purpose of protecting the bulkheads?

A. Yes. We would not be able to run ferry-boats in the winter without them. They protect the ferry-boats.

Q. Do the ends of the piers reach the channel?

A. The deepest water is towards New York. They run down from seven to eighteen feet of water.

Q. How far do you go down before you reach the bottom of the channel?

A. In order to get at the deepest water you have to go three-quarters the distance to New York.

Q. What is the distance from one dock to the other in a direct line across to New York?

A. The map shows that.

Q. Could this ferry be conducted properly without going out where it is?

A. No, sir; to run large boats, you cannot. You could not even run small boats.

It was agreed that *that* the measurements which Mr. Clark gave were low-water measurement; and also that the treaty between New York and New Jersey should be considered in evidence, and might be referred to by either party.

40 DEFENDANT'S EXHIBIT No. 1.

Charter and supplements of the Central Railroad Company of New Jersey, (formerly Somerville and Easton Railroad Co.)

An act to incorporate the Somerville and Easton Railroad Company, approved February 26, 1847.

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That Garrett D. Wall, Thomas A. Hartwell, William Thompson, John O. Sterns, John Kean, George H. Pegram, and William P. Robeson, and such other persons as may hereafter be associated with them, shall be and are hereby ordained, constituted, and declared to be a body corporate and politic, in fact and in name, by the name* of "The Somerville and Easton Railroad Company," and shall be capable of purchasing, holding, and conveying any lands, tenements, goods, and chattels whatsoever, necessary or expedient for the objects of this incorporation.

2. *And be it enacted*, That the amount of the capital stock of said company shall be twelve hundred thousand dollars,† with liberty to increase the same to two millions of dollars, and shall be divided into shares of fifty dollars each,‡ which shall be deemed personal property, and transferable in such manner as the said corporation shall by their by-laws direct.

41 3. *And be it enacted*, That the above-named persons may open books to receive subscriptions to the capital stock of said corporation, at such time or times, and place or places, as they, or a majority of them, may think proper; and as soon as the same shall be subscribed, to give notice for a meeting of the said stockholders, to choose nine directors; and such election shall be made at the time and place appointed by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the capital stock entitling the holder thereof to one vote, and the said above-named persons, or a majority of them, shall be inspectors of the first election of directors of the said corporation, and shall certify, under their hands, the names of those persons duly elected, and deliver over the subscription books to the said directors; and the time and place of holding the first meeting of directors shall be fixed by the said persons named in the first section of this act, or a majority of them; and the directors chosen at such meeting, or at the annual election of said corporation, shall, as soon as may be, after every election, choose out of their own number a president; and in case of the death, resignation, or removal of the president or any director, such vacancy or vacancies may be filled for the remainder of the year wherein they may happen, by the said board of directors, or

* For change of name, see page 14, section 3.
† For increase of capital to 5,000,000, see page 17, section 2.
‡ For authority to change the value of shares to $100, see page 17, section 2.

a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president pro tempore, who shall have such power and functions as the by-laws of the said corporation shall provide.

4. *And be it enacted*, That in case it should happen that an election of directors should not be made during the day when, pursuant to this act, it ought to be made, the said corporation shall not, for that cause, be deemed to be dissolved, but such election may be held at any other time; and the directors for the time being shall continue to hold their office until new ones shall have been chosen in their places.

5. *And be it enacted*, That five directors of said corporation shall be competent to transact all business of the said corporation, and they shall have power to call in the capital stock of said company, by such instalments and at such times as they may direct; and in case of the non-payments of said instalments, or any one of them, to forfeit the share or shares upon which such default shall arise; and to make and prescribe such by-laws, rules, and regulations as to them as shall appear needful and proper, touching the management and regulation of the stock, property, estate, and effects of the said corporation; and also shall have power to appoint a secretary and so many clerks and servants as to them shall seem meet, and to establish and fix such salaries to them, and also to the president, as to the said board shall appear proper.

6. *And be it enacted*, That the president and directors of the said company be, and they are hereby, authorized and invested with all the rights and powers necessary and expedient to survey, lay out, and construct a railroad, or lateral roads, from one or more suitable place or places in the village of Somerville, northerly, in the most direct and feasible route, to the Musconetcong Valley, passing to the north, or within two miles of the village of Clinton, in the county of Hunterdon; thence passing down the valley of the Musconetcong, or any valley northward, to the valley of the river Delaware; thence up the Delaware, to one or more suitable place or places within two miles of the Easton Delaware bridge, opposite to the village or borough of Easton, in the State of Pennsylvania, with a branch from any convenient point on the route of said road to the village of Belvidere, in the county of Warren, not exceeding one hundred feet in width,* with as many sets of tracks and rails as they may deem necessary; and it shall and may be lawful for the said president and directors, their agents, engineers, superintendents, or others in their employ, to enter at all times upon all lands and waters, for the purpose of exploring, surveying, leveling, or laying out the route or routes of such railroad, or lateral and branch roads, and of locating the same, and to do and erect all necessary works, buildings and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such road or lateral and branch roads shall have been determined upon, and a survey of such route or routes deposited in the office of the Secretary of State, then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, contractors, workmen, and other persons in their employ, to enter upon, take possession of, hold, have, use, occupy, and excavate any such lands, and to erect embankments, bridges, ferries, and all other works necessary to lay rails, and to do all other things which shall be suitable or necessary for the completion or repair of the said road or roads, subject to such compensation as is hereinafter pro-

* As to additional width for slopes and embankments, see page 18, section 6.

vided: *Provided always*, That the payment or tender of the payment of all damages for the occupancy of lands through which the said railroad or railroads may be laid out, be made before the said company, or any person under their direction or employ, shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said road or roads, unless the consent of the owner or owners of such lands be first had and obtained: *Provided nevertheless*, That the said road or lateral roads shall in no way impair the chartered rights, or interfere with the Camden and Amboy Railroad and Transportation Company, and Delaware and Raritan Canal Company, in the transportation of passengers or merchandise between Philadelphia and New York, whereby to diminish the revenue of this State, under the penalty of a forfeiture of its chartered rights and franchises.

7. *And be it enacted*, That when the said company, or its agents, cannot agree with the owner or owners of such required lands or material, for the use or purchase thereof, or when, by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or materials so required for the use of the said company, in the construction of the said road, shall be given in writing, under the oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the supreme court of this State, who shall cause the said company to give notice thereof, to the persons interested, if known and in this State, or if unknown or out of this State, to make publication thereof, as he shall direct, for any term not less than six days, and to assign a particular time and place for the appointment of the commissioners hereinafter named; at which time, upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial, and judicious free-holders, not resident in the county in which the lands or materials in controversy lie, or the owners reside, commissioners to examine and appraise the said land or materials, and to assess the damages, upon such notice, to be given to the persons interested, as shall be directed by the justice making such appointment, to be expressed therein, not less than six days; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation, before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question, and to make a true report according to the best of their skill and understanding) to meet at the time and place appointed, and proceed to view and examine the said land or materials, and to make a just and equitable estimate or appraisement of the value of the same, and assessment of damages, as shall be paid by the said company for such lands or materials and damages aforesaid; which report shall be made in writing, under the hands and seals of the said commissioners, or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land or materials, and the appointment and oaths or affirmations aforesaid, in the clerk's office of the county in which the land or materials are situate, to remain of record therein; which report, or a copy thereof, certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of the said company to have, hold, use, occupy, possess, and enjoy the said land or materials, or of the said owner or owners to recover the amount of said valuation, with interest and costs, in an action of debt in any court of competent jurisdiction, in a suit to be

nstituted against the company, if they shall neglect or refuse to pay the same for twent days after demand made of their treasurer, and shall, from time to time, constitute a lien upon the property of the company in the nature of a mortgage; and the said justice of the supreme court shall, on application of either party, and on reasonable notice to the others, and allow such costs, tax fees, and expenses to the justice of the supreme court, commissioners, clerks, and other persons performing any of the duties prescribed in this section of this act, as they or he shall think equitable and right, and to order and direct by whom the same shall be paid, under the circumstances of the case.

8. *And be it enacted*, That in case the said company, or the owner or owners of the said land or material, shall be dissatisfied with the
46 report of the commissioners named in the preceding section, and shall apply to the justices of the supreme court, at the next term after the filing of the said report, the court shall have the power, upon good cause shown, to set the same aside, and thereupon to direct a proper issue for the trial of the said controversy, to be formed between the said parties, and to order a jury to be struck, and a view of the premises or materials to be had, and the said issue to be tried at the next circuit court to be holden in the said county, upon the like notice, and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to assess the value of the said land or materials, and damages sustained; and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the said company, and execution awarded therefor; but if the said jury shall be applied for by the said owner or owners, and shall demand the same or a less sum than the company shall have offered, or the said commissioners awarded, then the said costs to be paid by said applicant or applicants, and either deducted out of the said sum found by the said jury, or execution awarded therefor, as the court shall direct: *Provided*, That such application shall not prevent the company from taking the said land or materials upon the filing of the aforesaid report.

9. *And be it enacted*, That it shall be the duty of the said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad or roads where any public or other road shall cross the same, so that the passag · of carriages, horses, and cattle on the said road shall not be impeded thereby; and also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagon ways over or under said road, so that he may pass the same.

47 10. *And be it enacted*, That the president and directors of the said company shall have power to have constructed, or to purchase with the funds of the company, and to place on any railroad constructed by them, all machines, engines, wagons, carriages, or vehicles for the transportation of persons, or any species of property thereon, as they may think reasonable, expedient, or right: *Provided*,* They shall not charge more than at the rate of six cents per mile per ton for the transportation of property on the said road or roads, or four cents per mile for carrying each passenger on said railways in the carriages of the company, or three cents per mile for each ton of property transported, or two cents per mile for each passenger carried on said railways in the carriages of others, and three cents per mile for each empty carriage; and that the railroad or roads and their appendages, and the land over

* For amendment of proviso, see page 18, section 5.

which the same shall pass, and all the works and improvements, steam-engines, carriages, and all other property whatsoever, belonging to the said company, at any time or times, are hereby vested in the said company incorporated by this act, and their successors and assigns, during the continuance of this act.

11. *And be it enacted*, That the president and directors shall, within one year after the said railroad shall have been completed, declare and make such dividend as they may deem prudent and proper, of the net profits thereof, and shall, in like manner, semi-annually thereafter, declare such dividends, and pay the same to the stockholders of the said company, in proportion to the amount of shares held by them respectively, as they may deem prudent and proper.

12. *And be it enacted*, That if any person shall wilfully impair, injure, destroy, or obstruct the use of any railroad enjoyed under the provisions of this act, or of any of their necessary works, wharves, bridges, carriages, or machines, such person or persons so offending shall
48 forfeit and pay to the said company the sum of fifty dollars, to be by them recovered in any court having competent jurisdiction, in an action of debt, and further, shall be liable for all damages.

13. *And be it enacted*, That the said company may have and hold real estate at the commencement and termination of said road or roads at Somerville and the Delaware River, and at intermediate depots upon the line of the said road, not exceeding five acres at each place,* and may erect and build thereon such houses, warehouses, machine shops, and other buildings and improvements as they may deem expedient for the safety of property, and the construction of cars, carriages, steam engines, and for other necessary uses; and shall also have the privilege and authority to erect, build, and maintain, at the Delaware River, or within thirteen miles of the borough of Easton, such wharves, piers, bridges, and other facilities as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this act; which said lands shall be obtained in the manner provided for in the seventh section of this act.

14.† *And be it enacted*, That as soon as the railroad, with its appendages, shall be finished so as to be used, the president and treasurer of the said company shall file, under oath or affirmation, a statement of the amount of the cost of the said road, including all expenses, and the amount of all purchases made by virtue of this act, in the office of the secretary of this State; and annually thereafter the president and treasurer of the said company shall, under oath or affirmation, make a statement to the legislature of this State of the proceeds of said road, until
49 the net income of said road shall amount to six per centum upon the amount of its costs; and as soon as the net proceeds of said railroad shall amount to six per centum upon its cost, the said corporation shall pay to the treasurer of this State a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter, on the first Monday of January of each year: *Provided*, That no other tax or impost shall be levied or assessed upon the said company.

15. *And be it enacted*, That the said corporation shall have power to borrow such sum or sums of money, from time to time, as shall be necessary to build, construct, or repair said road, and furnish the said corporation with all the necessary engines and machinery for the uses and objects of the said company, and to secure the repayment thereof

* For additional powers, see page 16, section 5, and page 17, section 1.
† For repeal of this section, see page 19, section 8.

by bond and mortgage, or otherwise, on the said road, lands, privileges, franchises, and appurtenances, of or belonging to said corporation, at a rate of interest not exceeding seven per cent. per annum.

16. *And be it enacted*, That any time after the expiration of fifty years from the completion of the said road, the legislature of this State may cause an appraisement of the said road, and the appendages thereof, to be made by six persons, three of whom shall be appointed by the chief justice of this State for the time being, the remaining three by the company, who, or a majority of them, shall report the value thereof to the legislature, within one year from the time of their appointment; or, if they cannot agree, they shall choose a seventh, who, with the aforesaid six, shall report as aforesaid, or in case the said company shall neglect or refuse to appoint the said three persons on their part for two months after their said appointment by the said chief justice, then the three persons so appointed by him shall proceed to make such appraisement, which shall be binding on the said company; or in case the said six commissioners shall be appointed as aforesaid, and they cannot agree upon the seventh man, then, upon two weeks' notice to the said company, the said chief justice shall appoint such seventh man as aforesaid, to make such appraisement as aforesaid, and thereupon the State shall have the privilege, for three years, of taking the said road, upon the payment to the company of the amount of the said report within one year after electing to take said road; which report shall be filed in the office of the secretary of this State, and the whole property and interest of said road, and the appendages thereof, shall be vested in the State of New Jersey, upon payment of the amount so reported to the said company; and that it shall be the duty of the president of the company to lay before the legislature, under oath or affirmation, when they shall so request, a full and fair statement of the costs of the said road, and of all the receipts and disbursements of the company: *Provided always*, That the aforesaid valuation shall be made without reference to the receipts or disbursements of the company, or advance of the stock; and the said valuation shall in no case exceed the first cost of valuation of said road, with the lands and appendages thereof.

17. *And be it enacted*, That if the said railroad shall not be completed and in use at the expiration of ten years from the fourth day of June next ensuing, that then in that case this act shall be void.

18. *And be it enacted*, That the legislature shall have the right to subscribe for the stock of the said company to the amount of twenty-five thousand dollars, at any time before or within twelve months after the said road or roads are completed.

19. *And be it enacted*, That this act shall be deemed and taken as a public act, and shall at all times be recognized as such in all courts and places whatsoever, and shall take effect immediately after the passage thereof.

A supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved February 22, 1849.

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That it shall and may be lawful for the said "The Somerville and Easton Railroad Company" to purchase the railroad from Somer-

ville, in the county of Somerset, to the sound, in the township of Elizabeth, in the county of Essex, constructed under and by virtue of an act entitled "An act to incorporate the Elizabethtown and Somerville Railroad Company," passed February ninth, eighteen hundred and thirty-one.

2. *And be it enacted*, That if the said purchase can be made in such manner that, for the payment or part payment of the purchase money for the said railroad, the stock of "The Somerville and Easton Railroad Company" will be taken therefor, then it shall and may be lawful for the said last-named company to issue so much of their capital stock now authorized by their said act of incorporation to be issued as shall be required for that purpose.

3. *And be it enacted*, That when the said purchase shall be made the railroad so purchased shall be and become a part of the railroad authorized to be constructed by "The Somerville and Easton Railroad Company," and in its further construction and completion, maintenance, use, and enjoyment shall be regulated and governed by the provisions of the charter of the last-named company, and for that purpose all and every provision of the act entitled "An act to incorporate the Somerville and Easton Railroad Company" shall extend and be applicable to the railroad so purchased, in every respect, as if the same had been authorized to be made and had been made under the said last-
52 mentioned act; and from thenceforth the said "The Somerville and Easton Railroad Company" shall be known by the name of "The Central Railroad Company of New Jersey;" and all suits now pending in any court of the State of New Jersey against the said company shall proceed to final judgment and dermination against the said company by the name of "The Somerville and Easton Railroad Company," and final process may issue thereupon against "The Central Railroad Company of New Jersey" the same as if the said suit had been originally commenced against "The Central Railroad Company of New Jersey:" *Provided*, That nothing in this act contained shall in any wise affect any right whatever, either at law or in equity, of any stockholder or other person in, or any claim or demand against, "The Elizabethtown and Somerville Railroad Company," or any lien whatever upon the said railroad, or upon any property which by virtue of this act shall be transferred or conveyed: *And provided further*, That upon such purchase as aforesaid being completed, the said "The Central Railroad Company of New Jersey" shall thereby become responsible for all debts contracted by "The Elizabetown and Somerville Railroad Company" since the foreclosure of the mortgage or mortgages under which the present stockholders of the said last-named company claim to hold the said railroad, and shall be liable therefor, in law and equity, in like manner as if the said debts had been contracted by "The Somerville and Easton Railroad Company:" *Provided, also*, That the said purchase shall be made with the consent of the last-mentioned stockholders.

4. *And be it enacted*, That the passage of this act, or any matter or thing herein contained, shall not be held, deemed, or construed in any wise to effect or prejudice the debts, claims, or demands of any person or persons, being creditors, or claiming to be creditors of the said "The Elizabethtown and Somerville Railroad Company;" but that all such persons shall have the full benefit of all action and actions, process and processes, at law and in equity, for the recovery of their said
53 debts, sued out of any court or courts, may be served upon any officer of the said "The Central Railroad Company of New Jersey," in the same manner as if the said "The Central Railroad Company

of New Jersey" were the defendants therein, and that such service shall be deemed valid and lawful; and that upon the recovery of any judgment or judgments, decree or decrees, therein against the said "The Elizabethtown and Somerville Railroad Company," execution or executions, or other process or processess, for the satisfaction of any such judgment or judgments, decree or decrees, shall issue for the sale of the said railroad, and any other property purchased by the said "The Somerville and Easton Railroad Company" from the said "The Elizabethtown and Somerville Railroad Company," or for the sequestration of the tolls, issues, and profits thereof, as the plaintiff or plaintiffs, complainant or complainants, in any such judgment or judgments, decrees or decrees, might have had against the said property, if this act had not been passed and such purchase had not been made; but not from any other property of the said "The Somerville and Easton Railroad Company," or of the said "The Central Railroad Company of New Jersey;" and that such execution or executions, process or processes, may issue, either against the said "The Elizabethtown and Somerville Railroad Company," or against the said "The Central Railroad Company of New Jersey;" and that the said "The Central Railroad Company of New Jersey" shall have the full and perfect right and benefit to use and have all pleas, defences, and protection at law and equity against any suit or suits, action or actions, brought or to be brought, prosecuted or to be prosecuted, and against any final process issued upon any judgment decree against the said "The Elizabethtown and Somerville Railroad Company," or the said "The Central Railroad Company of New Jersey," as the said "The Elizabethtown and Somerville Railroad Company," or any person under whom the said "The Central Railroad
54 Company of New Jersey" claim to hold claims and demands against the said "The Elizabethtown and Somerville Railroad Company" heretofore commenced, or hereafter to be commenced, as they might or could have had if this act had not been passed; and that any process or processess whatsoever, sued or to be the said purchased property, could or might have had, if this act had not been passed.

5. *And be it enacted*, That it shall and may be lawful for the said company to purchase and hold lands at the termination of the said railroad at the sound, in the township of Elizabeth, in the county of Essex, not to exceed twenty acres, for the purpose of erecting thereupon such depots, buildings, and shops, and such piers, wharves, and other fixtures, as may be necessary for the purposes of the said company, and for the accommodation and transportation of passengers and merchandise: *Provided*, That the aforesaid lands and improvements shall be subject to the same assessment and payment of township and county taxes as other real estate is or shall by law be subjected to.

6. *And be it enacted*, That the governor, the chancellor, the justices of the supreme court, and the judges of the court of errors of this State, when travelling for the purpose of discharging the duties of their offices, and the members of both houses of the legislature of this State, during its annual or other sessions, shall pass and repass over the said railroads, in the cars thereof, free of charge.

7. *And be it enacted*, That this act shall take effect immediately.

NOTE.—The purchase of the Elizabethtown and Somerville railroad, and consequent change of name of the company, dates from the 1st April, 1849.

55 A further supplement to an act entitled "An act to incorporate the Somerville and Eastern Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved March 17, 1854.

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That it shall be lawful for the Central Railroad Company of New Jersey to erect, build, or extend such wharves, docks, or piers opposite to and adjoining any lands owned by them in the township of Elizabeth, as far in the sound or bay as may be necessary for the purposes of facilitating the transhipment of coal, and their general transporting business; and, also, to have and to hold whatever wharves, piers, lands, or lots, steamboats, sailing vessels, and such other facilities, in the city of New York, or elsewhere, as may be necessary or for the management of their business.

2. *And be it enacted*, That the said company may, from time to time, with the assent of a majority in interest of the stockholders, increase their capital stock to any sum not exceeding five millions of dollars; and may also change the value of shares by issuing one share of the value of one hundred dollars, in place of every two shares of the value of fifty dollars.

3. *And be it enacted*, That it shall be lawful for the said company to purchase or lease or operate any railroad which may connect with or intersect their road, or to guarantee the bonds of such company, or to consolidate the stock of such company with their own, on terms to be mutually agreed on: *Provided*, Such purchase or consolidation shall not be made without the assent of three-quarters in interest of the stockholders: *And provided also*, If any stockholder or stockholdrs shall refuse his or their assent, or if by reason of absence or legal inability such assent cannot be obtained, application may be made by such stockholder
56 or stockholders within three months from the time that the purchase or consolidation shall take effect, to one of the justices of the supreme court of this State, for the appointment of three disinterested, impartial persons, well acquainted with the value of railroad property, as commissioners, to appraise the value of the shares held by such stockholder or stockholders: *Provided*, That the appraisement shall be less than the par value thereof; whereupon such proceedings shall be had as are provided in section seven of the act of incorporation, for appraising and taking lands, so far as the same is applicable.

4. *And be it enacted*, That when such purchase or consolidation shall have been made, the railroad so purchased or consolidated, if in this State, shall be and become a part of the railroad authorized to be constructed by the act of incorporation; and in its further construction and completion, maintenance, use, and enjoyment, shall be regulated and governed by the provisions of the said charter and its supplements; and for that purpose all and every provision of the said act of incorporation and supplements thereto, shall extend and be applicable to the railroad so purchased or consolidated, in every respect, as if the same had been authorized to be made, and had been made under the said act to which this is a supplement.

5. *And be it enacted*, That the proviso in section ten of the act of incorporation shall be held to apply only to property usually freighted by the ton, and to passengers carried more than one mile.

6. *And be it enacted*, That the provisions of article six of the act of incorporation shall apply to land exceeding one hundred feet in width, in any places where, from the depth of the excavation, or the height of the embankment, it is necessary to take more land for the slopes, and pro-

tection of the side banks of the said railroad or its branches; in which case, so much land as may be necessary for the purpose, and no more, shall be taken.

57 7. *And be it enacted*, That it shall be lawful for the said company to change or alter the location of their said railroad, or to locate new lines when additional tracks shall be required, at any point or points between Phillipsburg and Elizabethport, not varying in any case over one mile from the line as located and filed, after filing in the office of the secretary of this State a survey of such location as varied from the original location, and shall be invested with all the powers and privileges, and subject to all the conditions and restrictions in taking possession of, and using the land required, which by their act of incorporation they might exercise, and to which they are subject respecting lands required for the road: *Provided*, That in all cases where the said company shall locate any new line or lines of tracks within the township of Bridgewater, and shall not be the owners of all the land lying between the old line or lines and the new line or lines that may be located as aforesaid, the old lines shall be vacated, and the land upon and over which the same have been constructed shall revert to the original owners thereof, so soon as such new lines shall be completed and made ready for the use of said company.

8. *And be it enacted*, That it shall be the duty of the treasurer of said company, on the first Monday of January of each and every year hereafter, to pay to the treasurer of this State a tax of one-half of one per centum upon the cost of said road, as shown by the annual report of such cost, made the year preceding the said first Monday of January, in which such payment as aforesaid shall be made: *Provided*, That no other tax or impost shall be levied or assessed upon the said company; and section fourteen of the act of incorporation is hereby repealed.

9. *And be it enacted*, That if the said company shall, within six months from the passage of this act, file in writing their assent to and acceptance of all the provisions of this act, then the said act shall take

58 effect immediately thereafter; but in case the said company shall refuse or neglect so to do within the time specified, then this act shall be null and void.

NOTE.—The acceptance of this act was duly filled within six months.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved February 23, 1860.

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That it shall and may be lawful for the Central Railroad Company of New Jersey to extend their railroad from some point in their track in the city of Elizabeth, to some point or points on New York Bay, in the county of Hudson, at or south of Jersey City; and for that purpose, in its construction and completion, maintenance, use, and enjoyment, all and every provision of the act entitled "An act to incorporate the Somerville and Easton Railroad Company," and of the several supplements thereto, shall extend and be applicable to the railroad now authorized to be constructed, in every respect as if the same had been originally authorized under the said act to which this is a supplement.

2. *And be it enacted*, That the said railroad company shall construct a suitable bridge over any navigable water that they may cross, with a pivot draw, with two openings, each of seventy-five feet in width, at right angles to the main channel, located at a point convenient for

navigation; and for the safety of persons navigating the said river or water, the said company shall cause to be kept a red light at each outer side of said draw, and a white light on each inner side of said
59 draw, which shall be lighted every evening, before it grows dark, and kept lighted till daylight; and shall keep, or cause to be kept, at such bridge, a careful person or persons to open such draw for the free passage of vessels with standing masts; and for each and every willful neglect to light the said lamp or lamps for one night, or to open said draw, the company shall forfeit and pay the sum of fifty dollars, to be recovered with costs, in any court having jurisdiction thereof, by any person who shall sue for the same, within six months from the time of such neglect.

3. *And be it enacted*, That it shall be the duty of said company, for the accommodation of commuters and the local travel, to continue their early morning and evening trains from and to Somerville and New York, at least as early in the morning as seven o'clock from Somerville, and as late in the evening from New York as four and a half o'clock.

4. *And be it enacted*, That nothing herein contained shall be construed to prejudice the claims of ripiaran shore owners, and that in constructing their said railroad in the county of Hudson, they shall not cross the Jersey City and Bergen Point plank road more than once, and shall not construct said road nearer than one thousand feet from a parallel line with the said plank road, except where it may cross the same.

5. *And be it enacted*, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved February 23d, 1863.

1. *Be it enacted by the senate and general assembly of the State*
60 *of New Jersey*, That the railroad authorized in the act to which this is a supplement may lawfully be constructed four hundred feet from and not nearer to the plank road at the division line of the lands of John R. Vreeland and George R. Vreeland, and five hundred feet from and not nearer to the said plank road at the New York Bay Cemetery, and six hundred feet from and not nearer to said plank road at Geo. Vreeland's road, and ten hundred feet from and not nearer to said plank road in the line between Stephen Vreeland and Albert Brown's, and said railroad shall not be constructed at any point south of the last-mentioned line, nearer than nine hundred feet of the said plank road, except for the purpose of crossing the same, and that said railroad may be constructed at the distance of nine hundred feet at any point south of said last-mentioned line.

2. *And be it enacted*, That all acts and parts of acts conflicting with this act be, and the same are, hereby repealed.

3. *And be it enacted*, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved March 11, 1863.

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That the Central Railroad Company of New Jersey may, from time to time, with the assent of a majority in interest of the stockholders of said company, increase their capital stock to any sum not exceed-

ing three millions of dollars, in addition to the present authorized amount of capital.*

61 2. *And be it enacted*, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved April 5, 1865.

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That the Central Railroad Company of New Jersey may, from time to time, with the assent of a majority in interest of the stockholders of said company, increase their capital stock to any sum not exceeding three millions of dollars, in addition to the present authorized amount of capital.†

2. *And be it enacted*, That this act shall take effect immediately.

Supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved April 6, 1865.

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That it shall be lawful for such corporation of the State of Pennsylvania as has acquired, or may acquire, the requisite power from the said State to hold the title to such bridge, and to the requisite offices at the end thereof, in joint ownership, or in such manner as may be agreed upon with the said Central Railroad Company of New Jersey.

62 2. *And be it enacted*, That nothing in this act, or the act to which this is a supplement, shall be construed to authorize the construction of any bridge which shall destroy or materially injure any of the works of the Morris Canal and Banking Company, or the ferry of the said company across the Delaware River, unless by agreement between the said companies or parties authorized to build the said bridge and the Morris Canal and Banking Company; and further to protect, as far as practicable, the rights aforesaid, and also the rights of navigation, and the interests of the public, the location of the piers and abutments of the said bridge shall, before the same shall be constructed, be approved by three suitable and disinterested commissioners, who shall be appointed by the chancellor and the chief justice of this State.

3. *And be it enacted*, That it shall be lawful for any other railroad or canal corporation of this State to use the said bridge, for the transportation of passengers or freight upon and over it, and to make such connections by tracks, switches, turn-outs, or otherwise, as may be requisite to give them a free use of said bridge for the conveyance of passengers or freight, to, upon, or over said bridge and to its connections, on either side of the river Delaware: *Provided*, That the corporation or corporations using said bridge shall pay to the said Central Railroad of New Jersey a sum not exceeding three cents per ton for each ton of merchandise or freight, and five cents per passenger for each passenger, transported over said bridge.

* Making total capital $8,000,000.
† Making total capital $11,000,000.

A further supplement to an act entitled "An act to incorporate the Somerville and Eastern Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved March 5, 1866.

1. *Be it enacted by the senate and general assembly of the State of*
63 *New Jersey*, That in all cases where land shall be taken by commissioners, under provisions of sections seven and eight of the act to which this is a supplement, where the owner or owners are either unknown or under any legal disability, the amount of the award shall be paid into the court of chancery before the company shall proceed to take possession.

2. *And be it enacted*, That the Central Railroad Company of New Jersey may, from time to time, with the assent of a majority in interest of the stockholders of said company, increase their capital stock to any sum not exceeding four millions of dollars, in addition to the present authorized amount of capital.*

3. *And be it enacted*, That this act shall take effect immediately.

DEFENDANT'S EXHIBIT NO. 2.

STATE OF NEW JERSEY:

An act to incorporate the American Dock and Improvement Company.

Whereas it is represented that John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert, and Moses B. Bramhall, and others their associates, now own certain tracts of land, situate in the townships of Bergen and Greenville, in the county of Hudson, and desire to acquire from the State other tracts of land contiguous thereto, covered with water, which they desire to fill in and reclaim from the water, and to divide into suitable building and other lots, and to sell and dispose
64 of the same for the benefit of the association, with the object of erecting a town, with docks, wharves, and bulkheads, so as to afford facilities to secure to this State a portion of the commerce and shipping of the city of New York; and whereas it is necessary for the success of their undertaking that they should be able to convey the said premises, from time to time, to such persons as may be desirous to purchase, notwithstanding death or other cause affecting the individuals owning or who may own the said land, and in order to give greater efficiency and concentration to their efforts for the improvement of the said land: Now, therefore,

1. *Be it enacted by the senate and general assembly of the State of New Jersey*, That John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert, and Moses B. Bramhall, and such other persons as they may associate with them, and their successors, shall be and they are hereby incorporated and made a body politic and corporate, in fact and in law, by the name of "The American Dock and Improvement Company," and that the capital stock of the said company shall be three million dollars, divided into shares of one hundred dollars each, which shall be subscribed and paid in at such times, upon such notice, and in such manner and instalments, as the directors of said company, by their by-laws, or otherwise, may direct; that such payment shall be made either in money or in land situate in said townships of Bergen and Greenville, in the county of Hudson; and in case of payment in land, the directors may issue in payment therefor the stock of said company upon such

* Making total capital $15,000,000.

terms as may be deemed best for its interests; and that in case of the failure of any stockholder to pay the instalments on his or her stock, at the place and within thirty days of the time appointed for the payment thereof, such stockholder shall incur a forfeiture of his or her share or shares, and of all previous payments thereon, for the use of the company.

65 2. *And be it enacted*, That the capital stock of the said company shall be deemed personal property, and the shares shall be transferable in such manner as the board of directors, by their by-laws, may direct; and every share shall entitle the holder to one vote, either in person or by proxy.

3. *And be it enacted*, That the affairs of the company shall, after the organization of the company, be managed by not less than five directors or more than nine, to be chosen by the stockholders of the said company annually, at such time and in such manner as the by-laws of the company may direct, who shall serve for one year, and until others are chosen in their stead, notice of which election shall be previously given for two weeks, in a newspaper published in the county of Hudson; the said directors shall, from time to time, elect a president from their number, and may also appoint such other officers as may be convenient or necessary, who shall receive such compensation as the by-laws may direct.

4. *And be it enacted*, That John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert, and Moses B. Bramhall shall be the first directors of the company, a majority of whom shall, as soon as convenient after the passage of this act, assemble and organize such company, and shall continue in office until others, as hereinbefore directed, shall be chosen in their stead.

5. *And be it enacted*, That as soon as the said company shall be organized, it shall be authorized to receive conveyances for the lands now owned as aforesaid between the south line of the lands of "the Central Railroad Company of New Jersey," where it intersects the New York Bay and Kavan Point, and to hold and execute all instruments and conveyances necessary for the purchasing, leasing, or selling of such property; and the said company are hereby authorized to purchase and hold any lands adjoining or near the above-mentioned

66 tracts, which they may deem necessary for improving and enlarging said property, and to pay for all lands with the shares of its capital stock, at such price as the company may deem best for its interest: *Provided*, They shall not hold at any time over two hundred acres above the present high-water mark, in addition to the tracts mentioned in this section.

6. *And be it enacted*, That the said company shall be, and hereby are, authorized to improve all and every portion of the said lands under water, held or purchased by them as aforesaid, by erecting buildings, and laying out said lands into lots, streets, squares, docks, lanes, alleys, or other divisions, and by levelling, grading, raising, or tunnelling the said land, streets, lanes, and alleys; and they shall have liberty to fill up, raise, occupy, possess, and enjoy, as their own property, all lands covered with water which they may hold or purchase, or which may lie in front of any lands which they may hold or purchase, and may build, enlarge, or improve, or sell and convey to others to improve, all and any land or lands under water, wharf or wharves, bulkhead or bulkheads, piers, slips, and other structures which they may deem necessary for commercial, shipping, or other purposes: *Provided*, That, in carrying out the provisions of this act, they shall not injure the navigation of the Hudson River, nor interfere

with the legal rights of others, nor build out beyond the easterly line of Hudson street, in Jersey City, extended southerly, or such other exterior line as may be fixed by law; and that the southerly line of the said improvements, into the bay, shall be on a line commencing on the southerly side of Kavan Point, at the boundary line of lands of late belonging to Stephen B. Vreeland, and at the point where said boundary line strikes the shore of New York Bay, and from thence running south forty-six degrees and thirty-nine minutes east to the channel of the Hudson River: *Provided*, That the northerly line shall be parallel to and with the said southerly line: *And provided always*, That the said
67 company shall pay for the oysters planted, if any there be, upon any land under water which they may improve, to the person or persons by whom they were planted, or shall give them at least one year's notice to remove the same; and in case the value of such oysters cannot be agreed upon, then, in such case, either party, upon twenty days' notice to the other party, may apply to the court of common pleas of the county of Hudson, whose duty it shall be to appoint three disinterested freeholders of said county to appraise the same, whose report, or the report of any two of them, made in writing to the said court, shall be final and conclusive; and in determining said value, the said appraisers shall be governed by the like rules as arbitrators: *And provided further*, That nothing contained in this act shall be so construed as to give the said company any power to make any improvement whatever upon the tract of land under water in New York Bay, heretofore granted to Aaron Ogden, without the consent in writing of the said Aaron Ogden, or his legal representatives.

7. *And be it enacted*, That the said company shall have the right to demand and recover, by action at law, all wharfage, dockage, and cranage which may be levied upon any wharf, dock, pier, slip, or bulkhead erected by them upon their said land by virtue of this act.

8. *And be it enacted*, That unless the aforesaid improvement shall be commenced within one year from the passage of this act, then this act shall be null and void.

9. *And be it enacted*, That the legislature may alter, modify, or repeal this act whenever, in their opinion, the public good may so require.

10. *And be it enacted*, That a majority of the board of directors shall (after the expiration of the first year of the organization of this
68 company) be residents of this State, and that there shall be maintained at Jersey City a pincipal office for the conduct of the business of said company.

11. *And be it enacted*, That the said company shall pay to the treasurer of this State on or before the first day of July, A. D. eighteen hundred and eighty-five, the sum of twenty-five dollars for each and every foot of the shore embraced and contained in this bill, the amount of the same to be ascertained by the commission to be appointed by the governor, and the extent of the shore front is to be ascertained and measured as follows: Commencing at a point on the southerly side of Kavan Point, at the boundary line of lands of late belonging to Stephen B. Vreeland, and at the point where said boundary line strikes the shore of the New York Bay; and thence northerly in a straight line to the south line of the lands of the Central Railroad Company of New Jersey, where it intersects the New York Bay, and upon the aggregate amount so ascertained as aforesaid the said company shall pay to the State interest from the first day of July, eighteen hundred and sixty-five, at the rate of six per centum per annum, payable semi-annually; and the said aggregate amount so ascertained as aforesaid shall be and remain a lien upon

said lands until the payment of the same, with interest thereon; and a certificate of the said commissioners, signed by them and the president of said company, of the measurement of the shore line made as aforesaid, shall be filed in the office of the secretary of state.

12. *And be it enacted*, That the payment of a proportionate part of the aggregate amount of money provided to be paid as aforesaid shall release from the force and effect of this lien a corresponding proportionate part of the land under water, embraced and contained in this bill; and the interest upon the amount paid shall cease from the time of such payment; and upon such payment being made to the treas-
69 urer of the State, the said treasurer shall give to said company a certificate thereof, and the same being duly acknowledged may be recorded in the office of the clerk of the county of Hudson.

13. *And be it enacted*, That this act shall take effect immediately.

Approved April 11, 1864.

(Signed) W. S. JOHNSON.

DEFENDANT'S EXHIBIT No. 3.

Extract from the proceedings of the meeting of the board of directors of the Central Railroad Company of New Jersey, held at their office in Elizabethport, on Saturday, the 27th day of May, 1854.

The following preamble and resolutions were unanimously passed, viz:

Whereas, by the 9th section of an act entitled 'A further supplement to an act entitled an act to incorporate the Somerville and Easton Railroad Company,' passed February twenty-sixth, eighteen hundred and forty-seven, it is enacted as follows, viz:

"'*And be it enacted*, That if the said company shall, within six months from the passage of this act, file in writing their assent to, and acceptance of, all the provisions of this act, then the said act shall take effect immediately thereafter; but in case the said company shall refuse or neglect to do so within the time specified, then this act shall be null and void:'

"And whereas a meeting of the stockholders of the Central Railroad Company of New Jersey was held at Elizabethport on the first day of May, 1854, called for the purpose of taking into consideration
70 the acceptance of said supplemental act; and whereas the minutes of said meeting have been reported to this board, and are as follows, viz:

"'Elizabethport, May 1, 1854.—At the annual meeting of the stockholders of the Central Railroad Company of New Jersey, held at the office of the company; for the election of directors for the ensuing year, and for the purposes mentioned in the following notice, duly advertised, viz:

"'"Central Railroad Company of New Jersey.—Notice is hereby given that the annual meeting of the stockholders of the Central Railroad Company of New Jersey, for the election of directors for the ensuing year, will be held at their office, in Elizabethport, N. J., on Monday, the first day of May next, between the hours of 12 o'clock m. and 2 o'clock p. m.

"'"The supplement to the charter passed at the last meeting of the legislature will be laid before the stockholders for their consideration, at the same time and place.

"'The transfer books of the company will be closed ten days previous to the day of election.

"'By order of the board of directors.

(Signed) "'GEO. H. PEGRAM, *Secretary.*

"'ELIZ-TOWN, *April* 8, 1854."

"'John T. Johnson was, on motion, called to the chair, and Geo. H. Pegram appointed secretary. Twenty-six thousand five hundred and thirty-nine (26,539) shares of stock (the whole number being forty thousand (40,000) were represented in person or by proxy.

"'The secretary having read to the meeting the supplement to the charter passed at the last session of the legislature, it was unanimously

71 "'*Resolved*, That the supplement just read be approved by the stockholders, and that the directors be authorized to cause the assent to, and acceptance of, all the provisions of the said act by the company, to be filed in writing as required by the said act.

"'*Resolved*, That the stockholders assent to the increase of the capital stock from two to three millions by the directors from time to time, as required for the purposes of the company.

"'*Resolved*, That the directors be authorized and requested to change the value of shares from fifty dollars to one hundred dollars, and to issue one share of the latter value in place of every two shares of the former value now held by the stockholders.

"'After which the meeting adjourned.

(Signed) "'JOHN T. JOHNSON, *Chairman.*

"'GEO. H. PEGRAM, *Secretary.*'

"Therefore, be it now

"*Resolved*, That this board do now assent to, and accept of, all the provisions of this act, and that the president of the company do cause the seal of this company to be affixed to this preamble and resolution, and that he, together with the secretary, do sign the same, and do cause the same to be filed in the office of the secretary of state of New Jersey, as the compliance on the part of this company with the 9th section of said act.

"JOHN T. JOHNSON, *President.*

"GEO. H. PEGRAM, *Secretary.*"

{ Seal of the Central Railroad } { Company of New Jersey. }

72 STATE OF NEW JERSEY, *ss:*

I, Horace N. Congar, secretary of state of the State New Jersey, do hereby certify that the foregoing is a true copy of a paper purporting to be the "acceptance by the Central Railroad Company of New Jersey of the supplement to their charter, passed March 17, 1854," as the same is taken from and compared with the original, filed in my office, June 5th, 1854, now on file in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal this sixth day of October, A. D. 1868.

H. N. CONGAR.

I, Marcus L. Ward, governor of the State of New Jersey, do hereby certify that Horace N. Congar, esq., who hath signed the foregoing annexed certificate, was at the doing thereof and now is secretary of the

State of New Jersey, duly appointed, commissioned, and sworn, in accordance with law, and that full faith and credit are to be given to his official attestations, and that the signature thereto written is in the proper handwriting of the said Horace N. Congar, and the seal affixed his seal of office. And I further certify that the said certificate is in due form of law.

In testimony whereof I have hereunto set my hand and caused the great seal of the State to be affixed at Trenton.

Witness Marcus L. Ward, governor of the State of New Jersey, this sixth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[L. S.] MARCUS L. WARD.

By the governor:

H. N. CONGAR,
Secretary of State.

(Endorsed:) Filed June 5, 1854.

THO'S S. ALLISON,
Sec. of State.

(Here follow 2 maps, marked page 72.)

73 EXHIBIT No. 6.

To all to whom these presents shall come:

Whereas an act entitled "An act to incorporate the American Dock and Improvement Company," approved April 11th, 1864, provides that the American Dock and Improvement Company shall pay the treasurer of the State the sum of twenty-five dollars a foot on or before the 1st day of July, eighteen hundred and eighty-five, with interest, at the rate of six per cent. from the first day of July, 1865, for each and every foot of the shore embraced and contained in the said act of incorporation; the amount of the same to be ascertained by the commission to be appointed by the governor; and the extent of said shore front to be ascertained and measured as follows: Commencing at a point on the southerly side of Kavan Point, at the boundary line of lands of late belonging to Stephen P. Vreeland, at the point where said boundary line strikes the shore of the New York Bay, and thence northerly in a straight line to the south line of the lands of the Central Railroad Company of New Jersey, where it intersects the New York Bay; and that the said aggregate amount so ascertained, and interest thereon, shall be and remain a lien upon the lands as in said act stated, until payment thereof be made; and whereas the said commissioners duly appointed and qualified have, by their report now on file in the office of the secretary of state, duly certified that the measurement of the said shore line of the lands embraced and contained in said act is 4,589 feet; and whereas the aggregate amount of principal to be paid for 4,589 feet is $114,725; and whereas the said sum of $114,725 and the interest thereon has been duly paid:

Now, therefore, I, Howard Irvins, treasurer of the State of New Jersey, do hereby, at the request of the said company, certify and acknowledge that the said sum of $114,725, and all interest thereon,
74 was, on the first day of Nov., 1866, duly paid by the said "The American Dock and Improvement Company" to me, the said

Howard Irvins, as treasurer of the State of New Jersey, as by the said act provided.

Done at Trenton, this eleventh day of March, A. D. eighteen hundred and sixty-eight.

HOWARD IRVINS.

Signed and delivered in the presence of—
GEO. M. ROBESON.

Acknowledged 11th March, 1868, before—
GEO. M. ROBESON,
Master in Chancery.

Recorded in Hudson County clerk's office, 18th March, 1868, in Liber 164 of Deeds, p. 545, &c.

GEO. W. CASSEDY, *Clerk.*

STATE OF NEW JERSEY, *Department of State:*

I, Horace N. Congar, secretary of state of said State, do hereby certify that the foregoing is a true copy of an act passed by the legislature of this State, and approved by the governor the 26th day of February, A. D. 1847, and of the several supplements thereto, under their respective dates, as said printed book is taken from and compared with the original act and supplements now on file in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal at Trenton, this 29th day of September, A. D. 1868.

H. N. CONGAR.

I, Marcus L. Ward, governor of the State of New Jersey, do hereby certify that Horace N. Congar, esquire, who hath signed the foregoing certificate, was, at the doing thereof, and now is, secretary of state of said State, duly appointed, commissioned, and sworn, in accord-
75 ance with law; and that full faith and credit are to be given to his official attestations, and that the signature thereto written is in the proper handwriting of the said Horace N. Congar, and the seal affixed his seal of office; and that the said certificate is in due form of law.

In testimony whereof the great seal of the State is hereunto affixed.

Witness Marcus L. Ward, governor of said State, this 29th day of September, A. D. 1868, and of the independence of the United States the ninety-third.

[L. S.] MARCUS L. WARD.

By the governor:

H. N. CONGAR,
Secretary of State.

Upon the testimony aforesaid, and the facts so found as aforesaid, the said justice directed a judgment for the plaintiff; to which decision and ruling of the court the counsel for the defendants duly excepted.

Judgment.

At a special term of the supreme court held for the State of New York, at the city hall in the city of New York, on the fourth day of March, 1869.

Present, Josiah Sutherland, justice.

THE PEOPLE OF THE STATE OF NEW YORK
ag'st
THE CENTRAL RAILROAD COMPANY OF NEW Jersey.

This cause having been brought on to trial in its order on the calendar, and both parties having examined witnesses therein, and after hearing Mr. Amasa J. Parker for the plaintiffs, and Mr. John C. Dimmick for the defendant, and having duly considered the same:

76 It is ordered and adjudged that the State of New Jersey has no right or authority to authorize any person or persons to construct or erect any docks, wharves, piers, or improvements beyond low-water mark on the New Jersey side of the Hudson River and the Bay of New York, south of Spuyten Duyvel Creek, and west of Manhattan Island. And that the bulkhead constructed and erected by the defendant, extending east and west 2,400 feet on the south side, and 1,000 feet from north to south, with piers extending from said bulkhead easterly with the river, and 400 feet in length, and used by the defendant for docks and wharves, said bulkhead, piers, docks, and wharves being a little southerly of Jersey City wharf line, and next adjoining and southerly of the property of the Morris Canal and Banking Company, and connected with the shore west of them by a railroad constructed by the defendant, and running across that part of the bay south of Jersey City, the east end of said bulkhead being one mile and 105 feet distant from the shore, are an obstruction, and injurious to the navigation of the waters of the said bay and river, and an encroachment upon and into the harbor and river, and injurious to the interests of navigation, and to the harbor of New York, and that such erections are not on the shore, but outside of it, and within the navigable waters of the bay and river, and are located within the jurisdiction of the State of New York. And that the material used for filling up and making said railroad, bulkhead, piers, and wharves has been and is principally of street dirt from the city of New York, including much animal and vegetable matter, which undergoes the process of fermentation, and gives out the most offensive and pernicious and unwholesome odors, injurious to health, and particularly of those engaged in navigating the bay and river, and that the defendant is still engaged in filling in such erections, and the adjacent parts of such bay and river, with such materials.

77 And it is further ordered and adjudged that such erections are within the jurisdiction of the State of New York, and an infringement upon the rights of said State, and that said erections are a common and public nuisance, and ought to be abated by judicial authority.

And it is further ordered and adjudged that the said defendant do remove the said erections, bulkhead, piers, wharves, and railroad, and the earth, stone, dirt, animal and vegetable matters, and other materials of which they are composed, and restore the said river and bay to the condition in which it was before said erections were made, within one year after service on defendant's attorney, with a copy of this judgment; and in case the said defendant shall fail to make such removal as aforesaid, the sheriff of the city and county of New York is hereby directed to remove the same and to abate said nuisance.

And it is further ordered and adjudged that the defendant be, and it is hereby, perpetually enjoined against rebuilding any of said erections when removed, and against making any other erections, or filling in and displacing any waters of the said bay and rivers, by any filling

in with earth, stone, rubbish, timber, street dirt, or any other material, or making any other wharves or piers in any of the waters of said bay or river, between low-water mark on the New Jersey shore and Manhattan Island, and south of Spuyten Duyvel Creek, and from in any manner obstructing the navigation of said bay or river within the limits aforesaid, and from in any way altering the natural lay or run of its waters, and the shores thereof, within the said limits.

And it is further ordered that the plaintiffs do recover against the defendant the costs of this action, amounting to one hundred and fifty-seven dollars and ninety-four cents.

(Endorsed:) Filed August 4, 1869, at 9 hrs. and 10 min. m.

(A copy.)

THO'S E. LOEW, *Clerk.*

78 *Findings of fact and law.*

Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK *ag'st* THE NEW JERSEY CENTRAL RAILROAD COMPANY.

The undersigned, a justice of the supreme court, before whom this action was tried at the special term, having heard the evidence and the arguments of counsel, do find the following facts:

1. That on the 16th day of September, 1833, an agreement was entered into between the commissioners of the State of New York, and the commissioners of the State of New Jersey, in the language and terms set forth in the answer, and in 1 vol. of the revised statutes of this State, fifth edition, which agreement was ratified by Congress, and by the said States, and is now in full force and effect.

2. That the defendant, without any authority from the plaintiff, has taken possession of, and appropriated to its own exclusive use, a large extent of land and water in the Hudson River, west of the middle of the waters of the Bay of New York and the Hudson River, and west of Manhattan Island, and south of Spuyten Duyvel Creek, and has there filled in and displaced the water, and constructed and erected a bulkhead, extending east and west 2,400 feet on the south side, and 1,000 feet from north to south, with piers extending from said bulkhead
79 easterly into the river, over 400 feet in length, and used the same as and for docks and wharves.

3. That said bulkhead, piers, docks, and wharves are a little southerly of Jersey City wharf line, and next adjoining and southerly of the property of the Morris Canal and Banking Company.

4. That such bulkhead, piers, and wharves are connected with the shore west of them by a railroad constructed by the defendant, of trestle-work, and filled in with dirt and other materials; and that the distance from the east end of the bulkhead to the said shore is one mile and 105 feet, and that such railroad runs across that part of the bay south of Jersey City.

5. That when the said work was commenced, which was in 1863, the depth of water at mean low water, from the shore out to the bulkhead, was from one foot 9-10 (which was the depth at the shore) to four feet and 1-10th; the middle of the way out it was four feet 1-10th, and grew a little deeper as it went out; that the depth of water at mean low water

along the bulkhead at the south line is now from 4½ feet to 12 4-10th feet at the point where the piers begin; that the depth along the south pier is from 12 4-10th feet at the bulkhead to 19 9-10th feet at the easterly end, and of the north pier from 3 9-10th feet to 19 4-10th feet at the easterly end.

That the depth of water increases gradually, but not regularly, as you proceed from the east end of the bulkhead to the east end of the piers.

That it appears by the map of the Coast Survey, which was in evidence, that the depth of water at or near the east end of the piers was 23 feet at the time of said survey, and before the piers were built.

80 6. That such erections are an obstruction and injurious to the navigation of the waters of the bay and river by displacing so much of the water of said bay and river as said erections occupy, and thus obstructing navigation that vessels ranging from 20 or to 30 tons could navigate the bay where the water is three or four feet deep at low tide; that the Hudson River steamboats draw only 4½ or 5 feet of water.

7. That such erections are an encroachment upon and into the harbor and the river of the depth aforesaid, and are injurious to the interests of navigation and to the harbor of New York.

8. That such erections are not on the shore, but outside of it, and within the navigable waters of the bay and river, and are located within the jurisdiction of the State of New York.

9. That the material used for filling up and making said railroad, bulkhead, piers, and wharves has been and is principally of street dirt from the city of New York, including much animal and vegetable matter, which undergoes the process of fermentation, and gives out the most offensive and very pernicious and unwholesome odors, to such an extent that they are perceptible at the Battery, on the east side of the river; that such odors are injurious to health, tending to cause diarrhea, typhus and typhoid fevers, and expose to sickness the public, and particularly those engaged in navigating the bay and river, and the defendant is still engaged in filling in such erections, and the adjacent parts of said bay and river with such materials.

10. That the defendants are a corporation duly created by the laws of the State of New Jersey. The original name of the defendants was "The Somerville and Easton Railroad Company," and was incorporated by an act of the legislature of the State of New Jersey, entitled

81 "An act to incorporate the Somerville and Easton Railroad Company," approved February 26th, 1847, the name having been changed pursuant to the laws of the State of New Jersey to that of "The Central Railroad Company of New Jersey," the original eastern terminus of the railroad of the defendants being on the sound, in the township of Elizabeth, in the county of Essex and State of New Jersey, opposite Staten Island.

That by a statute of the State of New Jersey, passed February 22d, 1849, entitled "A supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26th, 1847," it was declared to be lawful for the defendants to purchase and hold lands at the terminus of the said railroad, on the sound, in the township of Elizabeth, in the county of Essex, not to exceed twenty acres, for the purpose of erecting thereupon such depots, buildings, and shops, and such piers, wharves, and other fixtures as might be necessary for the purposes of said company, and for the accommodation and transportation of passengers and merchandise. That by an act of the legislature of the said State of New Jersey, passed March 17th, 1854, entitled "A further supplement to an act entitled 'An act to incorporate

the Somerville and Easton Railroad Company,' passed February 26th, 1847," it was, among other things, enacted that it should be lawful for the Central Railroad Company of New Jersey to erect, build, or extend, such wharves, docks, or piers opposite to and adjoining any lands owned by them in the township of Elizabeth as far in the sound or bay as might be necessary, for the purposes of facilitating the transhipment of coal and their general transporting business; and, also, to have and hold whatever wharves, piers, lands or lots, steamboats, sailing vessels, and such other facilities in the city of New York, or elsewhere, as might be necessary for the management of their business.

That by an act of the legislature of said State of New Jersey, passed February 23d, 1860, entitled "A further supplement to an act
82 entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26th, 1847," it was, among other things, enacted and declared that it should and might be lawful for the Central Railroad Company of New Jersey to extend their railroad from some point in their track in the city of Elizabeth to some point or points on New York Bay, in the county of Hudson, at or south of Jersey City, and for that purpose, in its construction and completion, maintenance, use, and enjoyment, all and every provision of the act entitled "An act to incorporate the Somerville and Easton Railroad Company," and of the several supplements thereto, shall extend and be applicable to the railroad thereby authorized to be constructed, in every respect as if the same had been originally authorized under the said act to which that was a supplement.

That the defendants proceeded to purchase and did purchase and receive conveyances for the land along the westerly side of New York Bay, in the State of New Jersey, from Van Horne's Creek, being a point south of Jersey City, to Washington street, in Jersey City, together with all the riparian rights of the parties from whom such purchases were made and conveyances taken, and that such purchases were made and conveyances taken from the parties in possession of and claiming to be the owners of the lands so purchased.

That the lands lying south of the lands so purchased and conveyed to the defendants, as aforesaid, and between said land so purchased by the defendants and Kavan Point, on the westerly side of said bay, were purchased by and conveyed to the American Dock and Improvement Company, which is a corporation created by the laws of the State of New Jersey, by an act of the legislature of that State, passed April 11th, 1864.

That said last-named company was authorized, by the act last mentioned, to receive conveyances for the lands between the south line of the lands of the Central Railroad Company of New Jersey, where it intersects the New York Bay and Kavan Point, and to hold and
83 execute all instruments and conveyances necessary for the purchasing, leasing, or selling of such property; and the said American Dock and Improvement Company were thereby authorized to purchase and hold any lands adjoining or near the above-mentioned tracts which they might deem necessary for improving and enlarging said property, and to pay for all lands with the shares of its capital stock at such price as the company might deem best for its interests.

And the said last-mentioned company were by the said last-mentioned act further authorized to improve all and every portion of the said lands under water held or purchased by them as aforesaid, by erecting buildings and laying out said lands into lots, streets, squares, docks, lanes, alleys, or other divisions, and by levelling, grading, raising, or tunnelling

the said land, streets, lanes, and alleys; and they, by said act, had liberty to fill up, raise, occupy, possess, and enjoy, as their own property, all lands covered with water which they might hold or purchase, or which may lie in front of any lands which they might hold or purchase; and by said act they were authorized to build, enlarge, or improve, or sell, and convey to others to improve, all and any land or lands under water, wharf or wharves, bulkhead or bulkheads, piers, slips, and other structures which they might deem necessary for commercial, shipping, or other purposes; provided that in carrying out the provisions of said act they should not injure the navigation of Hudson River, nor interfere with the legal rights of others, nor build out beyond the easterly line of Hudson street, in Jersey City, extended southerly, or such other exterior line as might be fixed by law.

That the defendants conveyed all the said lands and riparian rights so purchased and conveyed to the defendants, as aforesaid, between Van Horne's Creek and Washington street aforesaid, to the American Dock and Improvement Company, which last-mentioned company thereafter conveyed to the defendants a strip of land beginning at the
84 highlands on the westerly side of New York Bay, between Van Horne's Creek aforesaid and Washington street, in Jersey City, and extending from said highlands and about at right angles with the shore, across the flats on the westerly side of New York Bay, over a mile toward the centre of said bay or North River, upon a part of which lands the defendants have constructed the bulkhead, piers, railroad, and railroad tracks, improvements, and the structures hereinbefore set forth and hereinafter mentioned.

That upon the said lands last above mentioned the defendants have constructed the eastern terminus of their railroad and ferry-houses and slips, for the purpose of conveying their passengers and freight to and from their railroad to the city of New York.

That said ferry-houses, piers, and wharves are at the easterly end of the said lands so occupied by the defendants, and that the same are to the west of the exterior line of the wharves in Jersey City, and west of the centre of Hudson River or New York Bay.

That the said railroad of the defendants extends for about one mile across the flats in rear of said ferry-houses, wharves, and piers, to the Highlands on the New Jersey side of the river. That said railroad consists of a railroad track, originally built on trestle work, and now filled in with earth and other materials as hereinafter found, making a solid embankment from the Highlands aforesaid to said ferry-houses, wharves, and piers.

That in order to make and erect said structures, the defendants have displaced so much of the waters of said bay as were necessary to be displaced for that purpose, and no more. That the whole of said structures, so made by the defendants as aforesaid, are insufficient for the purposes of the business of the railroad of the said defendants. That the said flats over which the said railroad extends are covered with water to the depth of about $1\frac{9}{10}$ feet in some places, and extending in others to $4\frac{1}{10}$ feet deep. That said docks and piers, wharves, and
85 bulkhead are not extended further into said river than would be required for the use of a permanent ferry, such as is now used and conducted by said defendants.

And I find the following conclusions of law:

1. That the State of New Jersey has no right or authority to authorize any person or persons to construct or erect any docks, wharves, piers, or improvements beyond low-water mark on the New Jersey side of said

river and bay south of Spuyten Duyvel Creek, and west of Manhattan Island.

2. That the defendant has no right to make said erections where they are located within the navigable water of the bay and river; that they are within the jurisdiction of the State of New York and an infringement upon the rights of said State; that such erections are a common and public nuisance, and that it is the right and duty of the State of New York, in protecting the interests of the people and the commerce and navigation of the bay and river, to interpose and have the same abated by judicial proceeding. That for the reasons above stated, and as the materials used in filling up and making such erections are injurious to the public health, and in conflict with necessary sanitary regulations, the plaintiff is entitled to a perpetual injunction, as prayed for in the complaint.

I do therefore decide that this action is sustained on the facts proved, and that plaintiff is entitled to the judgment prayed for in the complaint for the abatement of the nuisance, and also to a perpetual injunction, as prayed for in the complaint, and also to recover the costs of this action.

J. SUTHERLAND, *Justice.*

86 : *Exceptions.*

Supreme court, city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE CENTRAL RAILROAD COMPANY OF NEW Jersey.

The defendants except to the following finding of facts, as found and signed by his honor Justice Sutherland, in this action, to wit:

First. To the finding of fact that the erections mentioned in said findings are an obstruction and injurious to the navigation of the waters of the bay and river, by displacing so much of the water of said bay and river as said erections occupy, and thus obstructing navigation.

Second. To the finding of fact that such erections are an encroachment upon and into the harbor and the river, and are injurious to the interests of navigation and to the harbor of New York.

Third. To the finding of fact that such erections are not on the shore, but outside of it, and within the navigable waters of the bay, and were and are located within the jurisdiction of the State of New York.

87 Fourth. To the finding of fact that the material used for filling up and making the railroad, bulkhead, piers, and wharves give out the most offensive, pernicious, and unwholesome odors, to such an extent that they are perceptible at the Battery, on the east side of the river; that such odors are injurious to health, tending to cause diarrhœa, typhus and typhoid fevers, and expose to sickness the public, and particularly those engaged in navigating the bay and river, and that the defendant is still engaged in filling in such erections, and the adjacent parts of said bay and river, with such materials.

The defendants also except to the following conclusions of law, as found by his honor Justice Sutherland, in this action, to wit:

First. To the conclusion of law that the State of New Jersey has no right or authority to authorize any person or persons to construct or erect any dock, wharves, piers, or improvements beyond low-water mark on the New Jersey side of said river and bay, south of Spuyten Duyvel Creek, and west of Manhattan Island.

Second. To the conclusion of law that the defendant has no right to make said erections where they are located within the navigable waters of the bay and river; that they are within the jurisdiction of the State of New York, and are an infringement upon the rights of said State; that such erections are a common nuisance, and that it is the right and duty of the State of New York, in protecting the interests of the people, and the commerce and navigation of the bay and river, to interfere and have the same abated by judicial proceeding; that for the reasons above stated, and as the materials used in filling up and
88 making said erections are injurious to the public health, and in conflict with the necessary sanitary regulations, the plaintiff is entitled to a perpetual injunction as prayed for in the complaint.

Third. To the conclusion of law and decision that this action is sustained on the facts proved, and the plaintiff is entitled to the judgment prayed for in the complaint for the abatement of the nuisance, and also to a perpetual injunction as prayed for in the complaint, and also to recover the costs of this action.

JNO. C. DIMMICK,
Att'y for Def'ts.

Notice of appeal.

Supreme court, city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK, plaintiffs,
against
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, defendants.

Please take notice, that the defendants, The Central Railroad Company of New Jersey, appeal to the general term of the supreme court of the State of New York, from the judgment entered herein in favor of the plaintiffs, on the fourth day of August, 1869, for one hundred
89 and fifty-seven dollars and ninety-four cents, and adjudging, among other things, that the State of New Jersey has no right or authority to authorize any person or persons to construct or erect any docks, wharves, piers, or improvements beyond low-water mark on the New Jersey side of the Hudson River and the bay of New York, south of Spuyten Duyvil Creek and west of Manhatten Island; and that the bulkhead, piers, docks, and wharves in said judgment described, are an obstruction and injurious to the navigation of the waters of the said bay and river, and an encroachment upon and into the harbor and river, and that such erections are not on shore, but outside of it, and are located within the jurisdiction of the State of New York; and further adjudging that the defendants do remove the erections, bulkhead, piers, wharves, and railroad mentioned in the said judgment, and the earth, stone, dirt, animal and vegetable matters, and other materials of which they are composed, and restore the said river and bay to the condition in which it was before said erections were made, within one year after service upon defendant's attorney of a copy of said judgment; and further adjudging and directing that in case the said defendants should fail to make such removal as aforesaid, that the sheriff of the city and county of New York do remove the same and abate the nuisance; and further, by the said judgment perpetually enjoining the defendants against rebuilding any of said erections when removed, and against making any other erections, or filling in and displacing any waters of the said bay and river, by any filling in with earth, stone, rubbish, timber

street dirt, or any other material, or making any other wharves or piers in any of the waters of said bay or river between low-water mark on the New Jersey shore and Manhattan Island, and south of Spuyten Duyvil Creek, and from in any manner obstructing the navigation of said bay or river within the limits aforesaid, and from in any way altering the natural lay or run of its waters and the shores thereof, within the said limits. And the defendants do appeal to said general term from
90 the whole and every part of the judgment entered in this action, on the fourth day of August, 1869.

Dated August 11th, 1869.

JNO. C. DIMMICK,
Att'y for Defendants.

To M. B. CHAPLAIN,
Attorney Gen'l,
And CHA'S E. LŒW,
Clerk of the City and County of New York.

91 Supreme court, special term.

THE PEOPLE OF THE STATE OF NEW YORK
vs.
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

SOUTHERLAND, J.:

On the trial of this action certain evidence (Laws of New Jersey and documentary evidence) was given on the part of the defendant, showing, or for the purpose of showing, that its acts and alleged encroachments on the rights and jurisdiction of the plaintiffs, mentioned and complained of in the complaint, were done, and are maintained, by or under the authority or license of the State of New Jersey.

The question of jurisdiction and of right, in view of or with reference to this evidence, or such evidence, it seems were not passed upon by the general term, on the appeal from the judgment at the special term for the defendant on the demurrer; yet, after carefully considering the opinion of Mr. Justice Ingraham, I think it justifies, if it does not require of me, a judgment pro forma for the plaintiffs, under the pleadings and proofs, especially in view of the certainty that all questions
92 under the pleadings and proofs of the case will be passed by the general term and by the court of appeals.

There must, therefore, be judgment for the plaintiff, with costs.

The findings of facts, &c., to be drawn by the counsel for the plaintiffs, and settled on notice.

(A copy.)

CHARLES E. LOEW, *Clerk.*

93 At a general term of the supreme court of the State of New York, held at the new court-house, in the city of New York, on the thirteenth day of November, 1869.

Present, Justices Clerke, Sutherland, and Cardozo.

THE PEOPLE OF THE STATE OF NEW YORK, respondents,
agst.
THE CENTRAL RAILROAD COMPANY OF NEW Jersey, appellants.

The appeal in this cause from the judgment rendered at special term

having been argued by Mr. John C. Dimmick for the appellants, and Mr. Amasa J. Parker for the plaintiffs, and due deliberation having been thereupon had, it is ordered and adjudged that the said judgment recovered by the plaintiffs in this action be, and the same is hereby, affirmed, with costs.

(A copy.)

CHAS. E. LOEW, *Clk.*

94 Supreme court of N. Y.

THE PEOPLE OF THE STATE OF NEW YORK, respondents,
agst.
THE CENTRAL RAILROAD COMPANY OF NEW Jersey, appellants.

This cause having been brought before the general term of this court on appeal from a judgment entered therein on the fourth day of March, 1869, in the clerk's office of the city and county of New York, in favor of the respondents and against the appellants; and the said appeal having been heard before said general term, and the decision of the court thereupon having been filed, whereby the said judgment so entered as aforesaid and appealed from was in all things affirmed, and the costs of said respondents on said appeal having been duly adjusted at eighty-one dollars and sixty-nine cents by the clerk of this court: Now, on motion of M. B. Champlain, attorney general for respondents, it is hereby ordered and adjudged that the aforesaid judgment be, and the same is in all things affirmed, and that the said respondents, in addition thereto, recover from the said appellants, the Central Railroad Company of New Jersey, the sum of eighty-one dollars and sixty-nine cents for their costs and disbursements on said appeal.

(Endorsed:) "Filed Dec. 29th, 1869, at 9 hrs. and 30 mts."
(A copy.)

CHAS. E. LOEW, *Clk.*

95 Supreme court, first judicial district, city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK, plaintiffs, respondents,
against
THE CENTRAL RAILROAD COMPANY OF NEW Jersey, defendants, appellants.

Take notice that the defendants hereby appeal to the court of appeals from the judgment of the general term of the supreme court in this action entered on the twenty-ninth day of December, one thousand eight hundred and sixty-nine, in favor of the plaintiffs, respondents, against the defendants, appellants, for eighty-one dollars and sixty-nine cents costs, and affirming the judgment entered herein on the fourth day of August, one thousand eight hundred and sixty-nine, on the decision rendered at special term of the supreme court in favor of the plaintiffs against said defendants.

And the defendants do appeal to the court of appeals from the whole and every part of said judgment entered in this action on the said

twenty-ninth day of December, one thousand eight hundred and seventy.

Dated the third day of February, one thousand eight hundred and seventy.

JOHN C. DIMMICK,
Att'y for Def'ts.

To M. B. CHAMPLAIN,
Attorney General, for the Plaintiffs.

CHAS. E. LEOW,
Clerk of the City and County of New York.

96 STATE OF NEW YORK, *City and County of New York, ss:*

I, Charles E. Loew, clerk of the supreme court in and for said county, do hereby certify that the foregoing consists of certified copies of the notice of appeal and judgment roll on file in my office.

In witness whereof I have hereunto set my hand and affixed my official seal, this 8th day of February, A. D. 1870.

[SEAL.] CHAS. E. LOEW, *Clerk.*

[5-cts. int. rev. stamp, canceled.]

New York supreme court, general term.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

CLERKE, P. J.:

The decision of the general term on demurrer to the complaint substantially decides the question which arose on the issues elicited from the pleadings after the service of the defendant's answer.

The only matter introduced at the trial of the issues, which was not presented on the demurrer, is that arising on the evidence given by the defendants for the purpose of showing that their alleged encroachments, set forth in the complaint, were done with the authority and under the license of the State of New Jersey.

97 But this could not possibly affect the main question, whether under the treaty of 1833 that State surrendered exclusive jurisdiction to the State of New York over all the waters of the bay and river and over the lands covered by said waters, to the low-water mark on the New Jersey side.

This court, at general term, decided this question in the affirmative; it is, therefore, res adjudicata.

No license or authority from any source can defeat or abridge the exclusive political jurisdiction of New York.

The judgment should be affirmed, with costs.

W. S. YARD,
Temporary Reporter.

I concur in saying that the decision of the general term, of the demurrer, may be considered as res adjudicata as to the main question, and therefore concur in the above conclusion; but it will be noted that I did not concur in, but dissented from, that decision.

J. SUTHERLAND.

98 Court of appeals, State of New York, ss.

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 24th day of June, in the year of our Lord one thousand eight hundred and seventy, before the judges of said court.

Witness the Hon. Robert Earl, chief judge presiding.

E. O. PERRIN, *Clerk.*

Remittitur, July 7th, 1870.

THE PEOPLE OF THE STATE OF NEW YORK, resp'ts, *ag't*
THE CENTRAL RAILROAD COMPANY OF NEW Jersey, app'l't.

Be it remembered, that on the twenty-sixth day of February, in the year of our Lord one thousand eight hundred and seventy, the Central R. R. Co. of N. Jersey, the appellant in this action, came here into the court of appeals, by Mr. John C. Dimmick, their attorney, and
99 filed in the said court a notice of appeal & return thereto from a judgement of the supreme court, first judicial district of the State of New York. And The People of the State of New York, the respondents in said action, afterwards appeared in said court of appeals, by M. B. Champlain, attorney general, which said notice of appeal and return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals having heard this cause argued by Messrs. F. T. Frelenghuysen and John C. Dimmick, of counsel for the appellant, and Messrs. A. J. Parker & M. B. Champlain, att'y gen., of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgement of the supreme court appealed from in this action be reversed; and it was further ordered and adjudged that the complaint in this action be dismissed with costs.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

100 Therefore it is considered that the said judgement be reversed and the complaint dismissed with costs. And hereupon, as well as the notice of appeal and return thereto aforesaid, as the judgement of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justice thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justice thereof, &c.

CORS. TEN BROECK,
Deputy Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 7th, 1870.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the
101 papers originally filed therein attached thereto.

[L. S.] CORS. TEN BROECK,
Deputy Clerk.

(Endorsed:) Filed July 28, 1870.

102 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of New York, before you, or some of you, having thereto been remitted by the court of appeals of said State of New York, after the decision rendered in said court of appeals by the judges thereof, being the highest court of law and equity of the said State in which a decision could be had in the said suit, between The People of the State of New York, plaintiffs, and The Central Railroad Company of New Jersey, defendant, wherein was drawn in question the construction of a clause of a statute of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of a statute, a manifest error hath happened to the great damage of the said The People of the State of New York, as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be thereupon given, that then, under your seal, distinctly & openly, you send the record
103 and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then & there held; that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws & customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first day of February, in the year of our Lord one thousand eight hundred & seventy, & of the independence of the United States the ninety-fourth.

[SEAL.] CHARLES MASON, *Clerk.*

M. B. CHAMPLAIN,
Attorney General of New York,
Attorney for Plaintiff in Error.

(Indorsed:) In the Supreme Court of the United States. The People of the State of New York, plaintiffs in error, vs. The Central Railroad Company of New Jersey, defendant in error. Writ of error. M. B. Champlain, att'y gen'l of N. Y., att'y for pl'ff in error.

I allow the within writ of error, Sept. 16th. 1870.

S. NELSON.

Filed Oct. 5, 1870.

104 UNITED STATES OF AMERICA, *ss:*

To the Central Railroad Company of New Jersey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, at the city of New York, wherein The People of the State of New York are plaintiffs

and you are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Nelson, one of the justices of the said Supreme Court of the United States, this 16th day of September, 1870.

S. NELSON.

(Indorsed:) In the Supreme Court of the United States. The People of the State of New York, plaintiffs in error, vs. The Central Railroad Company of New Jersey, defendant in error. Citation. M. B. Champlain, att'y gen'l of N. Y., att'y for pl'ff in error. Filed Oct. 5, 1870.

105 The answer of the justices of the supreme court of the State of New York for the first judicial district, (the same being a court of record,) a transcript of the record and judgment of this court, together with all things touching or in any wise concerning the same, we certify under the seal of our said court to the justices of the Supreme Court the United States, as within it is commanded.

By the court.

[SEAL.] CHA'S E. LOEW, *Clk.*

[Five-cent internal revenue stamp affixed and canceled.]

(Indorsement on cover:) No. 492. The People of the State of New York, plaintiffs in error, vs. The Central Railroad Company of New Jersey. New York sup. court.

Remittitur filed 17th October, 1870.

REC. 492—5.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

THE PEOPLE OF THE STATE OF NEW YORK, *Plaintiffs in Error*,
against
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, *Defendants in Error*.

POINTS OF PLAINTIFF IN ERROR IN OPPOSING MOTION TO DISMISS WRIT OF ERROR FOR ALLEGED WANT OF JURISDICTION.

This case involves the question of the boundary line between the States of New York and New Jersey which depends upon the construction of the treaty entered into between those States. That treaty was signed by the commissioners, on the 16th of September, 1833, and was ratified by the Legislatures of the respective States.

The ratification by New York is contained in chapter 8 of the Session Laws of 1834, page 8.

1 Rev. Stat. of New York, 4th ed., 74, 5th ed., 81.

On the 28th June 1834 (chapter 126), an act was passed by Congress, consenting to this agreement. The agreement or treaty will be found at length in 1 Revised Statutes of New York, 4th ed., 74, 5th ed., 80, or in Session Laws of New York, of 1834, chapter 8.

POINTS.

FIRST. The construction of a clause of a Statute of the United States is drawn in question in deciding upon the boundary line in question.

By article 1, section 10, sub. 2, of the Constitution of the United States, it is declared that no State shall, without the consent of Congress, "enter into any agreement or compact with another State."

The whole vitality of the treaty is therefore derived from the act of Congress. Without it, it would be inoperative, unconstitutional and void.

The act of Congress recites the language of the proposed treaty, and enacts it into law.

It is the enactment by Congress, therefore, which is under consideration. Its construction presents the question to be decided in this case.

There was, in law, no valid treaty before the passing of this act of Congress. When, therefore, it was recited, consented to, and enacted by that act, it had first breathed into it the breath of life. It is only when read on the pages of the congressional statute book, that it becomes important to consider its provisions, or to give a construction to its language, and we must decide upon its construction, with the act of Congress before us.

Congress gave its consent, not that an agreement might be entered into between these States, without regard to its provisions, but that a certain agreement

which it recited, and the provisions of which, were acceptable to Congress, might become obligatory. It is to be assumed, that Congress examined and weighed every separate provision, before it approved. Each one of its provisions was therefore considered and approved, before it was consented to, and was enacted into law.

The binding force upon the parties, of such provision, is, therefore, as much dependent upon the action of Congress, as if the Constitution had authorized Congress to define, by statute, the boundaries between the States and it had done so in this instance.

Each party thus claims, under the statute of Congress, by which consent was given, and each party relies upon its construction as claimed by it.

The construction of a clause of a statute of Congress, is thus drawn in question, and it has been decided, by the State court, adversely to the claim the State of New York sets up under it.

We come, therefore, within the letter as well as the spirit of the 25th section of the judiciary act of 1789, defining the jurisdiction of this court.

It is decided that the jurisdiction in question extends to a case where both parties claim under the same act of Congress.

Buel v. Van Ness, 8 Wheaton, 312.
Ross v. Barland, 1 Peters, 665.

SECOND. The motion to dismiss the writ of error should therefore, be denied.

M. B. CHAMPLAIN,
Attorney-General of New York.

AMASA J. PARKER,
Of Counsel.

Abbott

Mr. Justice Clifford

In the Supreme Court of the United States.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, DEFENDANTS IN ERROR,
ads.
THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS IN ERROR.
} No. 71.

STATEMENT AND POINTS FOR DEFENDANTS IN ERROR ON MOTION TO DISMISS.

FREDERICK T. FRELINGHUYSEN,
Of Counsel for Defendants in Error.

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, plaintiffs in error,
against
THE CENTRAL RAILROAD COMPANY OF NEW Jersey, defendants in error.

Points of defendants in error on motion to dismiss writ of error for want of jurisdiction.

The writ of error in this cause (see folio 102 of Remittitur) alleges as the ground of error relied on that in the decision of this cause in the State court there "was drawn in question the construction of a clause of a statute of the United States," and that "the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of a statute."

To determine whether such error as is alleged exists it becomes necessary to ascertain what is the subject-matter of the controversy; what the right was the plaintiffs brought their action to enforce, and how they obtained that right. Was it granted to them by an act of Congress, or did they obtain it by grant from New Jersey, (to which Congress assented?)

In September, 1833, a compact was made between the States of New York and New Jersey, establishing the boundary between these States, and settling the questions of jurisdiction in relation to the river and bay of New York and the water and land under water in said river and bay. And by this compact this boundary

was declared to be in the middle of the said river and bay.

In 1865 (thirty-two years afterward) New York, for the first time, made a claim that, by virtue of this compact, the sovereign jurisdiction was granted to her over the said bay and the waters thereof, to low-water mark on the New Jersey shore, and that consequently no wharf, pier, or improvements could be made on the New Jersey shore without legislative authority derived from her. Therefore, to establish this right, the State commenced an action in the courts of her own State against the defendants, alleging as the basis of the action that the defendants in error had constructed and were constructing docks, wharves, &c., on the New Jersey shore without authority derived from New York, and they complained that this conduct of the defendants was in violation of, and in total disregard of, this alleged sovereign jurisdiction that had been so granted by New Jersey to New York; and in setting out title to this jurisdiction they so claimed. On the complaint in this action they set forth the making and execution of this compact; they set out its terms so far forth as they deemed necessary to show that New Jersey had, by this compact, given them jurisdiction over the *locus in quo*.

They then allege that Congress gave its consent to this compact, and then state that this compact is "of full and binding force *upon the said two States*."

And they then, in the complaint, proceed to state the encroachments by the defendants in error on their waters "west of the middle of the waters of the bay of New York and the Hudson River." (See Remittitur, folios 1 to 5, for their allegations.)

The defendants, in answering this complaint, admit the execution of the compact, and that Congress assented to it, (Remittitur, folio 9;) and they set out the whole compact, in '*hæc verba*,' (folios 15 to 20.)

The court on the trial find, as a matter of fact, that this compact was in the words as set forth in said answer. (Remittitur, page 42, folio 78.) And the defendants then insist, in their answer, that the lands upon

which the said alleged encroachments have been made are, by the said compact, within the territory, and subject to the jurisdiction of the State of New Jersey. (Folio 13.)

This being a suit in which a State is a party, ought to have been brought in Federal courts, (Art. III, sec. 2, of Con. of U. S.;) and been regularly appealed to this court. Under the provisions of the Constitution it might have been brought as an original suit in this court, (Story on Consti., sec. 1702; New Jersey *v.* New York, 5 Pet., 284; Kentucky *v.* Ohio, 24 How., 96–7; Governor of Georgia *v.* Madiazo, 1 Pet., 110.)

But the State of New York having elected its own courts, this court has no appellate jurisdiction by reason of the character of the parties; but if it has any such jurisdiction, it is by virtue of the nature of the controversy, and because the case draws into controversy the Constitution, Treaties or laws of the United States; (Cohens *v.* Virginia, 6 Wheaton, 392; Martin *v.* Hunter's Lessee, 1 Wheat., 337.)

Statute confirming jurisdiction is 1 Stat. at Large, page 85, sec. 25.

POINTS.

I. The right claimed by the plaintiffs in error, for the enforcement of which this action is brought, is the right to sovereign jurisdiction over the land and water in the rivers and bay of New York.

II. The question arising on this motion is, by virtue of what grant did New York obtain her alleged title to this jurisdiction?

III. The defendants in error submit that the title, if it ever was acquired, was obtained by a grant of this jurisdiction made by New Jersey by this compact to New York.

1. New York did not and could not obtain sovereign jurisdiction over the territory in question by any act of Congress. Congress could not grant such jurisdiction, for it was not the owner or possessor of such jurisdiction, and therefore could not grant it.

2. New York and New Jersey then alone retain the

not surrendered by the Constitution to the United States. It did surrender power to make treaties, but the power to make agreements it did not surrender, and was not called upon to do so.

These States make the agreement by virtue of the inherent power existing in them. (11 Peters, 209, Pool *v.* Fluger; 12 Peters, 724, Rhode Island *v.* Massachusetts.) The consent being given the States are as if there was no limitation.

The States can make the agreement; the statute in question says they had made it. The United States cannot make the agreement or confer jurisdiction. Can it be insisted that because the agreement is recited in the statute of consent, that it is a part of the statute so as to invoke the jurisdiction of this court? The recital preamble is without legislative import: Patters Dwarris on Stat., 265. If it is without legislative import no right, title, privilege, or exemption, can be given by it as a statute. It is the legislative will that courts of the United States are to see is rightly construed, and if this recital has *no force* in a legislative sense, (as Sedgwick on Statutory and Constitutional Construction, pp. 54 and 55, says,) how can it give any title? Smith on Statutory Construction, pp. 700, 701, and Dwarris, p. 655, say preamble is no part of the act. Story on Constitution, § 462, says the preamble, even of the Constitution of the United States, cannot confer any power per se; yet it is only such parts, such clauses of a statute as can give "title, right, privilege, or exemption," as can be reconstrued on appeal by the Supreme Court of the United States. The statute only consents to a grant of title, and so far from granting anything at all, it specially reserves everything that could be granted by it, and assumes that everything that is granted is granted by the States respectively. Judge Curtis, in his Digest, p. 92, pt. 13, says: "The power, though it can only be exercised with the consent of Congress, still resides with the several States."

If Congress passes a healing act, curing the defective execution of a conveyance of some part of the public

domain, and afterward the title to the property is controverted through all the State courts by individuals, and finally adjudged, this court would not have appellate jurisdiction because of the congressional healing act. That act did not make the title or any link in it; that Congress could not do, and the fact that Congress did pass the healing act, or its right to, or its effect, was not in controversy.

Congress cannot, by placing in an act a recital which Congress could not enact, make such recital a part of the statute, as in the case of a statute curing a defective deed. Here Congress did not make the agreement; it could not; and the fact that it did consent, or the effect of that consent, is not controverted.

The statute does not *draw after* it the agreement, and give jurisdiction. All that Congress undertook to do was to give the two States a title, not to jurisdiction, but to have the agreement asserted everywhere as a valid agreement and not as a statute.

The rule of *equality* applies in the administration of justice. If the question of boundary had been settled by the courts of New York in favor of New York, would not New Jersey consider it had a right to appeal to this court? If New Jersey did think so, she could not appeal, for she is not a party to the suit. Would not the Central Railroad Company of New Jersey think it had that right of appeal? No, because it would be advised that no provision of any statute that was enacted by the legislative authority conferred on Congress was involved in the suit. The Central Railroad Company of New Jersey would have applied to the State of New Jersey for protection of works constructed by her authority against the enforcement of the decree of New York within what New Jersey claims as her boundaries, and New Jersey would have filed her bill in this court for an injunction restraining New York and her officers from enforcing that decree until it was here settled what the boundary was, as New Jersey once before did.

If New York is not satisfied with its own court, she can yet file a bill here at any time.

The consequences of the courts maintaining this jurisdiction would be that the petty controversies between sheriffs and constables on arrests and levies, where there was a conflict as to jurisdiction, arising under agreements between States, with the consent of Congress, would be brought here for review.

We see, too, that this statute has full force and effect without attempting to give it the unreasonable and unlawful effect of enacting an agreement which the States had power to make. The right and title that the States got by the statute was to have the agreement recognized in all courts and controversies as valid. That both States enjoy, because in this controversy the plaintiff asserts, and the defendants admit, it as valid.

V. The plaintiffs in error, to maintain jurisdiction, must show a decree of the State court of New York contrary to the title claimed under the statute of the United States. (See Court of Errors, p. 52, for the errors alleged; 4 Wallis, 604, Ryan *v.* Thomas.)

The decision is contrary to the title New York sets up to the sovereign jurisdiction over the waters of the bay west of the middle of the bay, but is not adverse to any title the statute gives.

1. The *statute* could not give title to jurisdiction.

2. It does not undertake to give it.

3. New Jersey had the inherent power to give it. Poole *v.* Fuger, 11 Peters, 209; R. Island *v.* Mass., 12 Peters, 724, 725.

4. New York claims that New Jersey has granted this jurisdiction.

5. What the statute did grant was consent that these States might interchangeably confer on each other jurisdiction.

6. The plaintiffs admit, in and by their complaint, that the title is not by the statute, but by the agreement.

7. They cannot, and do not, put their finger on any title which this statute gives them which has been decided adversely to them.

VI. The statute giving the consent of Congress to the

agreement is not a *statute* of the United States *within the judiciary act.*

Any form of consent is enough.—Green *v.* Biddle, 8 Wheat., 85.

Any assent recognizing validity is enough, as by recognizing as law that which could not have been so recognized unless the agreement was valid.

Really, this was a consent by *implication*, though Story says there was "an *express* declaration of the legislative mind, *resulting* from the construction of the act itself," *i. e.*, the act which merely recognized the agreement as existing.—8 Wheat., 87.

Story on Constitution, § 1405, says consent may be implied. A statute cannot be *implied.* This shows that a consent is not a statute in its nature; and though it is given by a statute, it is not a statute within the judiciary act; nor is it *as* a statute that it has the effect of, and is construed to be, a consent. We submit that a statute is an enactment by virtue of a general legislative power, and that the consent given in the exercise of a special power is not a statute as the common law defines it and as intended in the judiciary act. It is like the case of a power to be exercised by trustees on the advice of a third party, as a conveyance. If the consent had been by the President it would not have been a statute. Is it any more so when by Congress when not acting under its general legislative power?

The distinction between the common law idea of a statute and the civilian's idea of a statute arises from the source from which the power to enact the statute comes.—Bouvier, title "Statute."

VII. The motion to dismiss the writ of error should, therefore, be granted.

FRED'K T. FRELINGHUYSEN,
Counsel of Defendants in Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

THE PEOPLE OF THE STATE OF NEW YORK, *Plaintiffs in Error*,
vs.
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, *Defendants in Error*.

Statement and Points of Plaintiffs in Error.

In November, 1865, an action was commenced in the Supreme Court of New York, in behalf of the State, by the Attorney-General, to abate a public nuisance, and to obtain the removal of obstructions which the defendants had placed in the harbor of New York and in the Hudson river, in extending a wharf out into the river and harbor a mile from the New Jersey shore. It was alleged that the navigation was obstructed by the erection, and that the material used for the filling in was injurious to the public health, and an injunction was also prayed for, to prevent future encroachments upon the harbor and river.

The defendants demurred. The demurrer was sustained at the Special Term, but, on appeal, it was overruled at the General Term. The defendants then answered, and, on trial at the Special Term, judgment was given for the plaintiffs, and that judgment was affirmed at the General Term. From that judgment the defendant appealed to the Court of Appeals of the State of New York, where the judgment was reversed and the complaint dismissed. To reverse that judgment this writ of error is brought.

The questions involved are, whether the erections made are within the boundary line of political jurisdiction of this State, and whether they obstruct navigation, and are injurious to the public health of those navigating the waters of this State, or to the health of the citizens of this State.

The boundary line of this State, in 1830, as declared by the statute of New York, extended to low water mark on the New Jersey shore.

It struck the west bank of the Hudson river at 41 degrees north latitude, and ran "thence southerly along the west shore at low water mark of Hudson's river, of the Kill Van Kull, of the sound between Staten Island and New Jersey, and of Raritan bay to Sandy Hook," &c. This was compiled from documents in the office of the Secretary of State of New York.

1 R. S., 5th ed., 80.
1 Rev. Laws, 1813, 238, 239, 240, 241.

For the boundary of the county of New York, see 1 R. S., 5th ed., 130. It extends to the west bounds of the State.

Some difference of opinion existing with regard to this boundary line, commissioners were appointed by both the States of New York and New Jersey, and on the 16th of September, 1833, an agreement or treaty was entered into and signed by the commissioners. That agreement was ratified by the legislatures of the respective States. The

ratification by New York is contained in chapter 8 of the Session Laws of 1834, page 8.

1 Rev. Stat. of N. Y., 4th ed., 74; 5th ed., 81.

On the 28th June, 1834, chap. 126, an act was passed by Congress consenting to this agreement.

The agreement or treaty will be found at length in 1 Rev. Stat. of N. Y., 4th ed., 74; 5th ed., 80; or, in Sess. Laws of N. Y. of 1834, chap. 8.

By article 1, sec. 10, sub. 2, of the Constitution of the U. S., it is declared that no State shall, without the consent of Congress, "enter into any agreement or compact with another State."

The whole vitality of the treaty is, therefore, derived from the act of Congress. Without it the treaty would be inoperative, unconstitutional and void. The act of Congress recites the language of the treaty, and enacts it into law. Its construction presents the question to be decided in this case.

The treaty contained the following provisions:

ART. 1. The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson river opposite the point on the w st shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the waters between Staten Island and New Jersey, and of Raritan bay, to the main sea, *except as hereinafter particularly mentioned.*

ART. 2. The State of New York shall retain its present jurisdiction of and over Bedlow's and Ellis islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that State.

ART. 3. The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay

of New York, and of and over all the waters of Hudson river lying west of Manhattan island and to the south of the Spuyten Duyvel creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and of jurisdiction of the State of New Jersey, that is to say:

1. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan island and New Jersey.

2. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New York, which now exist or which may hereafter be passed.

3. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said river, provided that the navigation be not disturbed or hindered.

Art. 4. The State of New York shall have exclusive jurisdiction of and over the waters of the Kill Van Kull, between Staten Island and New Jersey, to the westernmost end of Shooter's Island, in respect to such quarantine laws, and laws relating to passengers as now exist, or may hereafter be passed under the authority of that State, and for executing the same; and the said State shall also have exclusive jurisdiction, for the like purposes, of and over the waters of the sound from the westernmost end of Shooter's Island to Woodbridge creek, as to all vessels bound to any port in the State of New York.

Art. 5. The State of New Jersey shall have and enjoy

exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan bay lying westward of a line drawn from the light-house at Prince's bay to the mouth of Matteawan creek, subject to the following rights of property and of jurisdiction of the State of New York.

1. The State of New York shall have the exclusive right of property in and to the land under water, lying between the middle of the said waters and Staten Island.

2. The State of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island; and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessel shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New Jersey, which now exist or which may hereafter be passed.

3. The State of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters, provided that the navigation of the said waters be not disturbed or hindered.

ART. 6. Criminal process issued under the authority of the State of New Jersey, against any person accused of an offense committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid; or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New York, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New York, or fastened to

a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the State of New York.

ART. 7. Criminal process issued under the authority of the State of New York against any person accused of an offense committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid; or committed against the regulations made or to be made by that State in relation to the fisheries, mentioned in the fifth article; and also civil process issued under the authority of the State of New York, against any person domiciled in that State, or against property taken out of that State to revise the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New Jersey, unless such person or property shall be on board a vessel aground upon, or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

ART. 8. This agreement shall become binding on the two States when confirmed by the two Legislatures thereof respectively, and when affirmed by the Congress of the United States.

Thus it will be seen that by article 1, the *boundary line* is declared to be the middle, etc., "*except as hereinafter otherwise particularly mentioned.*"

That is to say, it is not the boundary line when it is hereinafter otherwise particularly mentioned. And all that is afterward said, is said of *property* and *jurisdiction*. The provisions as to these, therefore, do change or qualify the boundary line.

Article 2 only provides for the *jurisdiction* over certain islands.

Article 3 gives New York *exclusive jurisdiction* over *all* the waters of the bay and river, and over the lands covered

by said waters, to the low water mark on the New Jersey side.

Here the same exclusive jurisdiction is given to *both sides* of the middle of the waters of the river and bay.

New York has, therefore, the same jurisdiction on the west as on the east side, subject to the three exceptions made as follows:

1. New Jersey has the *right of property* in the land under water, lying west of the middle of the river and bay.

2. Also exclusive jurisdiction over the wharves, docks and improvements made and to be made on the shore of the said State, and over all vessels aground on said shore or fastened to such wharf or dock; except that such vessels shall be subject to the quarantine or health laws, and laws of the State of New York in relation to passengers, that now exists or may hereafter be passed.

3. New Jersey regulates the fisheries west of the middle of the waters, provided the navigation be not obstructed or hindered.

POINTS.

First. The result of this is, New York has *exclusive jurisdiction* equally on both sides the middle of the river, excepting that New Jersey has such jurisdiction over the docks, wharves and improvements *on the shore* of New Jersey, etc., etc., and a qualified right to regulate the fisheries.

This is all that is provided as to *jurisdiction*. The "right of property" gives no jurisdiction any more than it gives such right to an individual owning the fee of land.

It is mentioned only because a right of property may result from sovereign jurisdiction, and would, in this case, follow the exclusive jurisdiction of New York, if it had not been thus excepted under No. 1.

Jurisdiction means *political* jurisdiction—*governmental* jurisdiction—and covers every right of constitutional government.

1 Rev. Stat., 5th ed., 84.

When you say a *court* has jurisdiction, you mean to pronounce and enforce the law; when you say a *State* has jurisdiction, you mean *political* jurisdiction.

Generally speaking, jurisdiction and the right of soil go together.

New York v. Connecticut (Patterson, J.), 4 Dallas, 4.

As to ceding jurisdiction to the United States, see 1 R. S., 5th ed, 86, 117.

It is only docks, wharves and improvements *on the shore* that are under the jurisdiction of New Jersey; all the rest is agreed and declared to be under the exclusive jurisdiction of New York.

SECOND. What is meant by "*on the shore?*" It must certainly have some understood limit.

It cannot mean that New Jersey might build out to the middle of the river, for then the words "on the shore" would be useless and have no meaning.

It is, therefore, clearly a phrase of limitation. It was used to prevent building out beyond a certain limit. What was that limit?

The "shore" of tide water is that portion of the land which is alternately covered by water and left bare by the flux and influx of the tide.

Per Chancellor Walworth, Child v. Starr, 4 Hill, 375.
Harg. Tr., 12.
Storer v. Freeman, 6 Mass., 435, 439.
Commonwealth v. Charlestown, 1 Pick., 180, 182.
5 Day, 22.
Bouvier Law Dic. "Sea shore."

Where the water does not ebb and flow there is no shore, in the legal sense of the term. It has *ripam*, but not *littus*.

"The term 'shores,' applied to such a river, means the river's banks above the low water mark, or rather those portions of the banks of the river which touch the margin or edges of the water of the stream."

Child v. State, 4 Hill, 375, 376.
Ex parte Jenning, 6 Cowen, 547.
Bouvier Law Dic., "Shore" and "Seashore."

"Public treaties are to be interpreted like other laws and contracts."

Lawrence's Wheaton on Inter. Law, 2d ed., part III. chap. II, 493.
Grotius, book 2, chap. 16,
Vattel, book 4, chap. 17.
Rutherforth's Inst., book 2, chap. 7.

It will not be denied that it is perfectly well settled that with reference to land adjoining tide water, "shore" means that part between high water and low water mark.

If this is so, then such must be its application here.

But it is said to have been a needless provision, if such is the meaning, because New Jersey would, of course, and without it, have jurisdiction of that land.

The answer is that you cannot change the well settled meaning of a word by arguing that with that meaning the use of it would be needless. Its use in its true sense does not *change* the meaning; you may say it is superfluous, but superfluity does no harm.

It does not affect the agreement of the parties, whether the clause be inserted or not, if you take the word in its well settled sense.

Where words are of *doubtful* meaning, you may argue that it would be superfluous to give them a certain meaning; but such an argument avails nothing.

when the meaning is well *settled;* for parties must always be deemed to have used words in their well established signification.

2 Parsons on Contr., 13 note q.

If it is necessary to find a reason for inserting the clause, giving New Jersey jurisdiction over docks and wharves, etc., it may properly be said it was done to save any question on that subject, which might perhaps arise from the fact that the regulating of the commerce to these docks and the navigation of the river belong to New York under the "exclusive jurisdiction" given to it over all these waters. It may have been done *ex abundanti cautela.*

It will be observed that whether you interpret "shore" as it is applied where the tide ebbs and flows, or, in the other sense, as it is construed when there is no tide, in either case it is limited to the *low water mark.*

THIRD. But, if we are to make a new legal definition for the word "shore," that shall extend it below low water mark, on the pretense of the necessity for extending a dock or wharf below low water mark to a point deep enough for vessels to reach it; even then it could go no further than such necessity demanded, and would not protect even the State of New Jersey in building a rail-road across a bay more than a mile in length, for that obstructs navigation, and thus interferes with the rights and duties of the State of New York.

By giving exclusive jurisdiction to New York, that State is charged with the exclusive protection of the navigation of all the waters in question. While the fee of the land under water is given to New Jersey, all political or governmental power is given to New York.

The rights of New Jersey, as owner of this fee, are no greater than the rights of an individual citizen would be who owned the fee.

If, therefore, New Jersey may extend her docks so far as to reach navigable water, she cannot go so far as to *obstruct* navigation, for that would be a great public wrong, which New York is bound to prevent.

It will not be pretended that New Jersey has the power to obstruct navigation.

Even in exercising the only right she has in the waters, viz., that of regulating fisheries under the 3d subdivision of art. 3, she acts under the express condition, "that the navigation be not obstructed or hindered."

FOURTH. We insist that, inasmuch as New York has the exclusive political jurisdiction, the exclusive charge and regulation of navigation, and the exclusive right to legislate on that subject, or to act upon it through its public authorities, the exclusive right to *decide what is an obstruction belongs to New York.*

Such a right belongs to political power, and is no incident of the ownership of property.

The relative rights under this treaty are analogous to those in the case of a public highway or navigable stream above tide water. The owners on each side own the fee to the center, but it is subject to the right of the public to use it as a highway.

Varick v. Smith, 5 Paige, 137; 26 Wend., 404.

They can do nothing to obstruct travel. They cannot encroach upon the highway with their fences. The public authorities and not the owners of the fee, are to decide what is an obstruction or an encroachment.

No one will pretend that the owner of the fee has a

right to extend his buildings to the center of a highway, or to extend his dam out to the center of a navigable stream.

So, in this case, the river and the bay, as navigable waters, are highways; and no owner of the fee in the land, under the waters, has a right to obstruct or hinder navigation.

New Jersey will not engage in the private enterprise of building wharves and making docks, but she may deed away her fee in the land under water to an individual citizen.

That is all that can be claimed, and, perhaps, more than has been proven in this case. Suppose she does so. Can an individual citizen or corporation, owning the fee under water, do anything to obstruct the navigation of the bay or river? If the individual owner of the fee desires to erect a structure which will impede navigation in the least degree, he must apply for leave to the State that has exclusive jurisdiction over the waters, and not to the State or individual that sold him the fee. That State will then decide upon the propriety of the thing proposed to be done. It may either grant or reject the application, as it shall judge best for the interests of commerce. Exclusive jurisdiction makes it the sole arbiter.

Fifth. The true rights of the parties, under the treaty, are these: Giving to the word "shore" its ordinary and only legal signification, if the individual who has purchased the fee from New Jersey desires to build out a dock below low water mark, he must apply to New York for such permission, and when the dock is built, then New Jersey has exclusive jurisdiction of the dock. This was clearly the intention of the parties, and by such a construction all rights and interests are preserved and protected.

It is only when a dock becomes a legal structure that the exclusive jurisdiction of New Jersey over it begins. The creation of a nuisance erected by an individual below low water mark, without the consent of New York, can give New Jersey no jurisdiction, because it cannot divest New York of jurisdiction.

With this understanding of the rights under the treaty, the words are all used in their legal sense, and the provisions giving New Jersey jurisdiction over docks, wharves and improvements was a necessary, a proper one.

Any other construction would permit the grantee of the fee from New Jersey to be the judge as to his own encroachment, and would admit of no remedy by New York, even if he should extend his dock to the center of the river, and thus actually destroy one-half its value for navigation.

The great commercial interests of the public would thus be placed at the mercy of one man or one corporation.

SIXTH. But if New York is not the exclusive judge of the question of obstructions, then it is a question for the courts: and it appearing that the defendant has interfered with navigation beyond the limit of absolute necessity, a judgment should be rendered in favor of the plaintiff.

SEVENTH. This is no controversy with the State of New Jersey. She has not erected the structure complained of; she has not been made a party to this action. What she could claim if she had erected it and had been sued, we do not know, nor is it material to know.

A corporation which may have derived title to the fee of the land from the State has gone beyond its legal rights and erected a nuisance to navigation within the jurisdiction of New York; and the State of New Jer-

sey has no more to do with the litigation than it would have if the structure had been extended to the east bank of the river.

The defendant sets up that his nuisance is out of this State; but that makes no more question between us and New Jersey than there would be, if a man indicted for murder in the city of New York, should contend that he committed the crime in New Jersey, and make it necessary for us to show that the *locus in quo* was on the New York side of the line.

In that case, it would be, as in this, a simple question whether the act was done in this State or out of it.

EIGHTH. That the structure in question is a nuisance, obstructing navigation, and may be relieved against, is too well settled on authority to be questioned now.

Brown v. Jamison, 8 Barb., 239, 241.
Com. v. Combs, 2 Mass., 489.
Morgan v. King, 30 Barb., 9.

"Where an act is done by an individual which amounts to a nuisance in a navigable river, although a sufficient navigation is left to the public, still a court of equity cannot inquire whether the act is for the public good, but must abate the nuisance."

The People v. St. Louis, 5 Gilman, 351, cited in 10 U. S. Digest, 239.

The right to cross a navigable water by a railroad bridge must be given by the sovereign power, by a special or general act.

5 McLean, 425, 435.
Gibbons v. Ogden, 9 Wharton, 1.
Kent, 435, 438.
Steamboat Co. v. Livingston, 3 Cowen, 741.
S. C., 1 Hopkins R., 198.

Under an act of the Legislature giving the right to erect a dam upon navigable waters, the dam was so

built as to impede the navigation beyond what the act authorized; held, that this rendered it *pro tanto* a public nuisance, and that the remedy was not barred by a continuance of over twenty years.

Renwick v. Morris, 3 Hill, 621.
S. C., 7 Hill, 575.
Wetmore v. Tracey, 14 Wend., 250.
Lansing v. Smith, 4 Wend., 21.

All persons have the right to use uninclosed *flats* for the purpose of navigation.

Com. v. Roxbury, 9 Gray, 519.
Drake v. Curtis, 4 Cush., 413.
Com. v. Alger, 7 Cush., 74, 89.
Boston v. Lecraw, 17 How. U. S., 433, 434.
Dening v. Long Wharf, 25 Maine, 65.
Gerrish v. Union Wharf, 26 Maine, 392.

"The whole river, included within high water mark on each side, is a public highway. (4 Pick., 271.) Proprietors themselves of the banks, have no right to erect wharves or other obstructions between high and low water mark, if thereby the passage for vessels and boats would be materially straightened or injured. A public highway cannot be laid out across a navigable stream, except by license from the Legislature. Why? Because it will destroy an existing highway, the river itself, in which all the citizens have an interest."

Kean v. Stetson, 5 Pick., 494–5.

Every erection in a stream declared navigable by law which injures the navigation of such stream, is a nuisance, and no amount of collateral benefit, resulting from such erection to the community, can divest it of such character.

Gold v. Listen, 9 Humphrey, 369.
10 U. S. Dig., 359.

Anything that impedes the exercise of the public right to travel upon a highway, is a nuisance.

6 Mumford, 308.
2 Mass., 143.
1 Hawk, P. C., book C, chap. 76.

The continued and uninterrupted use, by the public for twenty years, of a stream for the purposes of navigation, constitute it a public thoroughfare and the destruction of it a nuisance which any one may abate.

5 Humph., 363.

The public have a right to the unobstructed use of every navigable water connecting two or more States.

5 McLean, 437.

Every erection in a navigable river which obstructs navigation, is a nuisance.

1 Stockton, 755, 788.

For a man to erect a wharf on public property although its erection be beneficial, and sufficient room be left for a passage on the river, is a nuisance.

1 Dallas, 150.

A dock is a space between two wharves.

Boston v. Lecraw, 17 How. U. S. R., 434.

NINTH. The judgment of the court at Special Term, was also clearly demanded for the preservation of the public health. The jurisdiction over that subject belonged exclusively to New York, and the State is bound to protect passengers, navigators and the inhabitants of the cities and surrounding country against the danger to health caused by the acts of the defendants.

TENTH. The judgment of the Court of Appeals of New York, should be reversed with costs, and either remitted for new trial or final judgment pronounced by this court.

M. B. CHAMPLAIN,
Attorney-General.

AMASA J. PARKER,
Of Counsel.

U. S. Supreme Court.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Defendants in Error,

ads.

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs in Error.

STATEMENT & POINTS

For Defendants in Error.

JOHN C. DIMMICK,

Of Counsel for Defendants in Error.

New York:

EVENING POST STEAM PRESSES, 41 NASSAU STREET, CORNER LIBERTY.

1871.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

U. S. Supreme Court.

No. 492.

The Central Railroad Company of New Jersey,
Defendants in Error,

ads.

The People of the State of New York,
Plaintiffs in Error.

Statement and Points for Defendants in Error.

This action was commenced in December, 1865, by the plaintiffs against the defendants, a corporation duly created by the laws of the State of New Jersey. The object of the action is to abate as nuisances certain wharves, bulkheads, piers and railroad tracks, made by the defendants on the west side of Hudson river, in the State of New Jersey, and south of Jersey City, upon the ground that the State of New Jersey, under whose au-

thority the defendants made the bulkheads in question, could not give authority or exercise the right to construct wharves or piers, or make improvements on the western or New Jersey side of the Hudson river and bay of New York, below low water mark.

The allegations of the complaint are not that New Jersey never had such right, but that by a compact entered into between the State of New York and New Jersey, New Jersey voluntarily agreed that her citizens should have no authority nor exercise the right to construct wharves or piers beyond low water mark on the New Jersey side of the said bay, and as wharves or piers can only be constructed below low water mark, the claim of the plaintiff is, that the State of New Jersey, by her Commissioners and Legislature, voluntarily abandoned and relinquished all right to construct wharves and piers on her side of the bay, and as commerce and intercourse with the other States of the Union and the world at large by means of these waters can only be carried on by the aid of wharves and piers constructed below water mark, the claim of the plaintiff is that New Jersey has by a treaty voluntarily entered into cut herself off from all commercial intercourse with the world by means of the great tidal waters that form the eastern boundary of that State, and the claim further is that the General Government was a party to this agreement, and that it *consented* that New Jersey should not have the right of erecting wharves along her own coast, but that New York should have the right of excluding the people of New Jersey from any beneficial use whatever of the waters of said bay, and make New Jersey an inland State.

The Act of Congress is to be found in Fourth Statutes at Large, page 708 : this Act sets forth the compact in *haec verba*, and then enacts that the consent of the Congress of the United States is hereby given to said agreement, and *each and every part and article thereof*, provided that nothing therein contained should be construed to impair or in any manner affect any *rights of jurisdic-*

tion of the United States, in or over the islands or waters which form the subject of the said agreement, and the Act is approved the 28th of June, 1834.

The compact will also be found at page 8, folio 15, of the remittitur.

And the question arises on the true constructon of this Act of Congress. Did the General Government intend by the compact so assented to, to exclude New Jersey from all right to erect wharves and piers on her side of the bay of New York, and exclude her citizens from all beneficial use of said waters? or did the General Government and New Jersey both intend by this act to secure to New Jersey that common and natural right belonging to every State bounded on navigable waters, the right of controlling and regulating the wharves and piers on its own shore.

This compact, as set forth in the Act of Congress above mentioned, is to be found at page 18 of the Case, the complaint claims to set out a portion of it, to wit, the third article of this treaty; but it omits, no doubt, by mistake, the very important words, "to be made," contained in the second subdivision of that article.

The complaint, it will be seen (*remittitur*, fols. 4 and 5), alleges that the encroachment complained of is adjoining, southerly, the property occupied by the Morris Canal and Banking Company, and at the southerly extreme of the Jersey City wharf line and that of the middle of the waters of the bay of New York and the Hudson river, and alleges, as the *ground of complaint* (fols. 4 and 5), that the erections in question are made *without any grant, authority or permit from the plaintiffs;* it is not alleged that the acts of the defendants are not authorized by New Jersey; the claim is that authority from New Jersey is of no consequence; the claim is that the erection of the wharves without any grant, authority or permit of the plaintiffs, violates the rights of the plaintiffs. (Fol. 14.)

The claim being that the construction of wharves on the New Jersey side of the bay, without authority from

the plaintiffs, was a violation of the jurisdictional rights of the plaintiffs under this treaty. The defendants at once interposed a demurrer to the complaint, on the ground that, by the treaty, New Jersey had exclusive jurisdiction in relation to wharves, piers and improvements made and to be made on the westerly side of said bay. The Court, at Special Term, Judge Potter presiding, sustained the demurrer, and dismissed the complaint. The plaintiff appealed to the General Term, when the judgment was reversed, on the ground, as we understand it, that, as by the third article of the treaty, New York had exclusive jurisdiction to low water mark on the New Jersey shore, that gave the Courts of New York authority to remove all obstructions put in said bay, except such as by the treaty the State of New Jersey had authority to make, and had authorized; and that before the defendants could raise any question as to the right of New Jersey to erect wharves, &c., they must answer and show that New Jersey had authorized the wharves in question. The defendants, thereupon, to avoid any difficulty, answered the complaint, and showed by their answer that the erections complained of consisted of wharves, docks and piers, which had been made as the eastern terminus of the said railroad, and of a railroad bed made of timber and stones, and *filled in with earth*, extending from the said wharves across the Flats to the Highlands in the rear thereof (fols. 12 and 13); and the defendants show that these improvements are all made under the authority of the State of New Jersey.

On the trial of the case before his Honor Justice Sutherland, the defendants proved their ownership to the land and their authority under the laws of the State of New Jersey and their charter, to construct the railroad and make the wharves in question; no question has ever been made, but that if the authority is with New Jersey to authorize the construction of these wharves, then the defendants cannot be disturbed.

But the Court adjudged, as matter of law, that the

State of New Jersey has no right or authority to authorize any person or persons to construct or erect any docks, wharves, piers or improvements beyond low water mark on the New Jersey side of said river. (See fol. 85, page 45.) This decision was a *pro forma* one merely, as appears by the opinion (fol. 91, page 48), and was declared to be in obedience to the decision of the General Term, on the demurrer; and the General Term, in giving their second opinion (page 150), put the case squarely on the ground that our authority, drawn from the State of New Jersey, is of no avail, and the claim is that that was *res adjudicata* by the General Term on the demurrer.

The location of the railroad and improvements made by the defendants is shown by defendants' Exhibit No. 4, page 39 (see fol. 72), and Exhibit No. 5 shows the whole land under water now owned by the defendants and conveyed to the defendants by the American Dock and Improvement Company (fols. 32 and 33).

The defendants submit, as a preliminary question, that this Court has not, and will not, take jurisdiction of this cause; that it does not involve the construction of a Statute of the United States.

If the Court take a different view of that question from that taken by the defendants' counsel, then the defendants in error submit the following:

POINTS.

First.—Before it can be held that the people of the State of New Jersey have voluntarily relinquished all right to have wharves and piers on their own shores, and to have control and jurisdiction over them, it must be shown that such intention has been expressed so clearly and unequivocally, that by no possibility of construction can such conclusion be avoided.

The consequences resulting from such construction to the people of that State, the impossibility of conceiving that the Legislature or Commissioners ever had any such intention, the violation of duty in it forbid any such conclusion.

Second.—The first article of the treaty established the boundary line between the two States in the middle of the river and bay of New York.

This gives to each State exclusive and absolute authority within its original limits, and the right to erect wharves and piers within its own limits.

1. Within its territorial bounds the authority of a State is supreme and exclusive.

2. Every State has the exclusive authority to determine and regulate the manner of holding and using property, and the *validity of all acts* done within its boundaries.

3. Each State has the *exclusive* right to determine and administer the remedies and modes of redress for any use or appropriation of real estate within such boundaries which is not warranted by its own laws, and to sustain and uphold such use when its own laws give them sanction.

4. New York, therefore, has no right to interfere in any form with lands west of the boundary line.

By virtue of the first article of the treaty the State of New Jersey had the exclusive right to construct and regulate the construction of wharves, piers, &c., within her own boundaries.

Third.—The third article of the treaty was intended to, and by proper construction does, establish this right in New Jersey. (See Article 3.)

The jurisdiction by this article, given to New York to the low water mark on the New Jersey side, was a police and not a political jurisdiction.

For it was a jurisdiction within the boundaries of another State, which in its nature could not be political.

And it was also declared to be *subject to the right* of property and of jurisdiction of the State of New Jersey, enumerated in subdivisions 1, 2 and 3 of that Article, and the jurisdiction conferred by these three subdivisions on New Jersey, was declared substantially to be the *supreme* or *sovereign jurisdiction.*

It is claimed that the jurisdiction given to New Jersey, by subdivision 2 of this Article, over the wharves, &c., to be made "on the shores of the said State," means wharves to be made between high and low water mark;

1. New York never had or claimed jurisdiction above low water mark; it was absurd, therefore, to provide that New Jersey should have jurisdiction to build wharves where she alone had undisputed jurisdiction, and where New York never claimed to have any jurisdiction.

2. As wharves, docks and piers for the purposes of commerce are only constructed below low water mark, such a construction is absurd on its face, without argument.

3. It being a rule of law that written instruments are to be constructed in such a way if possible, that force and effect and some *operation and substantial meaning* shall be given to every clause in

them, and this rule being especially applicable to a treaty and compact like this, it follows that this claim cannot receive a construction which renders nugatory the whole provision; either this fundamental rule of construction must be disregarded or this word must have some other construction than that claimed.

Parsons on Contract, vol. 11, page 17, and cases cited in note q.

4. It is a rule of interpretation that the key to the meaning of an instrument is to be found in the subject matter of it, and the nature of that subject, and it is to be construed with reference to the subject matter and the nature of it and so as to protect it and advance the object the parties had in view.

5. The provision here is the natural and just one, giving New Jersey jurisdiction over docks and wharves to be built on the shore of said State. Now as the parties were providing for docks and wharves to be made and for jurisdiction over them, and, as the subject matter, to erect docks and wharves are not and connot be built above low water mark, it follows necessarily from the subject matter of the treaty that the places where these docks were to be made was below low water mark.

6. This is also shown by the fact that the docks already made and described in the treaty as then made, were placed under the jurisdiction of New Jersey by the same language. The docks described as those then made on the *shore* of New Jersey were necessarily below low water mark, for there can be no such thing as a dock above low water mark.

7. There is no authority for showing that the word shore, *as used here*, means the strip between high and low water mark.

The rule for interpreting words which the law has defined the meaning of, is correctly stated at the end of note q, above cited, in II "Parsons on Contracts," pages 12 and 13, in these words;

"Where the law has defined the meaning of of words, they must be understood to be used in the sense which the law attaches to them, unless the context or the circumstances of the case indicate that another meaning is the one in which they are used."

The rule is also again laid down in 3 "Bingham," 196, when the Judges, in answer to a question of construction, submitted to them by an order of the House of Lords, say, "The meaning of an act of Parliament is to be ascertained from the subject to which it refers, so that the same words receive a different construction in different statutes;" or as expressed in "the Schuylkill Navigation Company *vs.* Moore, 2 Wharton, 491." "The best construction," says Gibson, Ch. J., "is that which is made by viewing the subject of the contract as the the mass of mankind would view it, for it may be safely assumed that such was the aspect in which the parties themselves viewed it. A result thus obtained is exactly what is obtained from the cardinal rule of intention."

When we speak of the shore of a certain river, or of a certain bay, it may be inferred that this strip only was intended, unless the context or subject matter shows it to be otherwise, but such is not the language; it is the shore of said *State.*

The term "Shore of the State," in a treaty between States, was used as it would be in a treaty between kingdoms, where it would read "Shore of the Kingdom," or other like expres-

sion, according to the nature or description designating the contracting parties.

And therefore has the same broad, comprehensive meaning as "Shores of England," "Shores of France."

It is obvious that had the expression been "New Jersey Shore," it would not have changed the meaning.

The expression is like "Shore of New York," or "Shore of England."

The term is not used exclusively to designate the strip between high and low water mark; it is often used to designate land above water, and often to designate the very edge of the water line, and no less frequently *the entire extent to which nations or states have proprietorship in the navigable waters by which they are surrounded.*

(*a.*) The phrase, "Shore of the State," is therefore to be construed according to the character of the parties, the nature of the subject, and the circumstances under which it was made.

Its use to designate land between high and low water is but one of many uses. That is used in discussing the right of property between the king or state and subjects, and has no application to questions arising between states or kingdoms bounded by the sea or separated by bays or arms of the sea.

(*b.*) The entire property in the lands under navigable waters within the territorial limits of a state or kingdom, and in the lands under water *adjacent* to its *coast*, is in the crown or state; these are the shores of such *kingdom* or *state.*

8. It was no part of the purpose of the treaty to regulate and control the *property* of either State or its use or improvement.

New York did not intend to give to New Jersey any jurisdiction of the wharves, docks, &c., which might in the future be made on Staten Island, nor to prescribe nor control the time or manner of their construction. See Article 5, Subdivision 2. New Jersey did not intend to give such jurisdiction or control to New York.

The object of the treaty was not to give to one State control over the property of the other, but conflict of jurisdiction was to be prevented and the right of pursuit over waters contiguous to either State conceded without the restraint of an invisible line in the unmarked middle of such waters.

9. The treaty expressly declares that the word shore is used as designating the land below low water mark for the jurisdiction to New Jersey, as not only over the docks, &c., to be made on the shore of said State, but it is also over all vessels aground *on said shore*, which must certainly be below low water mark.

10. The General Term in the opinion delivered on the demurrer in this case, page 8, folios 28 and 29 of that opinion, expressly declares that the term shore "*must have* a more extended construction than below high and low water mark, because the same word is afterwards used as places where vesels might get aground while navigating the river.

11. The plaintiffs in giving a construction to this treaty give it such a construction as shows that the term shore could not have the restricted

meaning claimed for it, for in the fourth point submitted by the plaintiffs in this case before the Court of Appeals of New York the plaintiffs' counsel state the meaning of the treaty in these words: "The true rights of the parties under the treaty are these given to the word 'shore' its ordinary and only legal signification. If the individual who has purchased the fee from New Jersey desires to build out a dock *below low water mark* he must apply to New York for such permission, *and when the dock is built then New Jersey has exclusive jurisdiction of the dock.* This was clearly the intention of the parties, and by such a construction all rights and interests are preserved and protected." This concedes that the jurisdiction given to New Jersey over docks built on the "shore" embrace docks built below low water mark.

Assuming, then, what is thus unavoidably conceded, that the jurisdiction of New Jersey over docks and wharves is not restricted to the strip between high and low water mark, the question arises is her jurisdiction limited to the docks *after they are built by the permission of New York.*

Fourth.—Whatever may be the extent of the authority given to New Jersey over wharves, docks, and improvements made and to be made on the shore of said State, whether it extended only to the docks after they were made, as the plaintiffs claim, or whether it gives her the larger authority claimed by the defendant, there can be no question but that so far as the authority did extend it was *sovereign and political.*

1. It is declared in Article 3 that the jurisdiction given to New York is *subject* to that given to New Jersey over wharves, docks, &c., not that the jurisdiction of New York is superior to that of New Jersey.

2. In subdivision two, it is declared that New Jersey shall have *exclusive jurisdiction* over wharves, docks, &c.

   This makes the jurisdiction of New Jersey sovereign and political, for it is *superior* to that of New York, and *exclusive*.

3. All the statements and arguments that have or can be made by the plaintiffs on their points to prove that the jurisdiction given to New York by Article 3 is *political* jurisdiction, the defendants submit, may be used to prove this fourth point of the defendants in error.

Fifth.—The question remains how far does this jurisdiction extend. The plaintiffs say it only extends to wharves, &c., after they are constructed, and to get this construction they take from and add to the sentence, and make it read in these words: The State of New Jersey shall have the exclusive jurisdiction over the wharves, docks, and improvements made and to be made on the shore of the said State, after the same are constructed, with the permission of the State of New York.

No rule of interpretation justifies such an addition and striking out of language—the rule is to take the language used by the parties, without any change, give it the interpretation fairly belonging to the words used, and to those words only, if by

so doing a just and reasonable interpretation can be arrived at, that is to govern.

Sixth.—The question then is, what authority is *New York to exercise* over the subject of wharves and docks?

1. The first section of the second subdivision, declares that the State of New Jersey shall have *exclusive jurisdiction* of, &c.; this undoubtedly means that the State of New York shall exercise no authority or jurisdiction of, and over the wharves, &c.

2. The sentence then may be read in these words: The State of New York shall exercise no authority or control of, and over the wharves, &c.

Seventh.—The question then is, what is it that New York is not to exercise any control or authority over? and what is its limit?

1. The language is *of* and over.

2. The controlling word of the section is *of*, and this word the plaintiff proposes to strike out.

3. In Worcester's Dictionary it is defined "with regard to," "belonging to," in Walker's Dictionary, among other definitions of it, are these, "concerning," "relating to."

Eighth.—The clause in the treaty then may be rendered in these words:

The State of New York shall exercise no authority or control in relation to or over the wharves, docks, or improvements made, and to be made, on the shore of the said State.

1. New York claims that no wharf or dock can be made on the shore without her consent.

2. That she alone is to determine where it is to be built, and its size and dimensions.

3. That she is to determine when it is to be built and the material with which it is to be filled in.

Each of these claims is a claim to exercise authority and control *in relation to or of and over* the wharves and docks *to be made* on the shore of New Jersey.

She can exercise none of the rights without exercising some authority in relation to or over the said wharves or docks to be made.

Ninth.—New Jersey has exclusive jurisdiction in relation to and over the wharves, docks and improvements made, and to be made, on the shore of the said State.

1. This *exclusive jurisdiction* gives to New Jersey all authority in relation to them.

2. It involves the right of *determining* when and where docks, &c., shall be made, their dimensions and the material with which they shall be made.

3. Exclusive jurisdiction in relation to such subject

matter can be satisfied with nothing short of this.

Tenth.—The decision of the Special Term, by Judge Potter, in the first instance was correct, in dismissing the complaint, for want of jurisdiction, on the defendant's demurrer—no answer is, or ever was, necessary in this case; the complaint shows (folios 10 and 11) that the erections are at the southerly extreme of the Jersey City wharf line, and west of the middle of the waters of the Bay of New York.

1. *Exclusive jurisdiction* in relation to all docks made or to be made where these are, is given to New Jersey.

2. This jurisdiction is sovereign and political over this subject.

3. Exclusive jurisdiction necessarily leaves it to New Jersey to determine whether the wharves, &c., are authorized, or whether they are to remain or not; the very essence of exclusive jurisdiction in such a case is the right *to determine* and *adjudge* every question that may or can arise in relation to the subject over which this jurisdiction is given.

4. New Jersey, under her exclusive jurisdiction in relation to the wharves, may permit to stand or may remove any wharf she sees fit; it is for her to see whether any wharf built on her side of the river since this treaty is properly built or not; *exclusive jurisdiction* in relation to the wharves to be made on the shore is satisfied with nothing less than this.

5. The position of the General Term that New York exercises sovereign jurisdiction to low water mark, and therefore she may, by bills filed in the Courts of New York, remove all obstructions in the bay is untenable.

6. Whether the jurisdiction of New York is political or police is immaterial, for it expressly declares that she is to exercise no jurisdiction, that is, no authority in any way over any docks, wharves or improvements she may find on the New Jersey shore; if it is a political jurisdiction she may exercise it to remove all obstructions except "docks, wharves and improvements;" when she finds an obstruction coming within that description she has no jurisdiction over it, because *exclusive jurisdiction over that* has been given to New Jersey.

If New York could exercise the right of *determining in her Courts* whether docks, &c., are properly or improperly there, she might, under the exercise of that right, completely defeat all the grants and authority New Jersey might give for erecting docks.

But this right of determining whether docks shall remain or not, this *right, so essential to exclusive jurisdiction and without which any jurisdiction is but a shadow, belongs exclusively to New Jersey*; she has never consented that New York shall adjudge or determine anything in relation to such docks—but New York has agreed that exclusive jurisdiction, that is, the right to determine everything *in relation to them*, shall belong to New Jersey.

If New Jersey claims that any wharves erected on her shore are not authorized and should be removed, must she *submit that question to the Courts of New York?* If an unauthorized dock is erected, whose right is invaded? Certainly that of New Jersey; and how is she to protect her right

to control the docks and wharves, and their construction, and the time, place and manner of construction, and the right to determine what docks are to remain and what are to be removed, unless the right to determine everything in relation to these questions is in her Courts, by virtue of the exclusive jurisdiction over that entire subject that has been vested in her.

Eleventh.—These wharves and improvements are now made and completed, the road and road-bed is finished, they are now within the jurisdiction of New Jersey, they are *wharves and improvements made*, and New Jersey alone is to say whether any one of them is to be removed or not.

The claim of the plaintiffs, that it is necessary for New York to have jurisdiction over the docks in order to prevent obstructions to navigation and injury to the bay, is untenable.

1. The bay, on its western shore, is as safe in the hands of New Jersey as of New York, as shown by the findings of fact in this case.

2. This treaty was made with reference to the fact, that the Courts of the United States have and exercise the jurisdiction of preventing and removing all obstructions to navigation in all navigable waters within the United States, and the authority of the United States over this whole subject was expressly reserved by Congress in consenting to the treaty.

3. *Therefore New York did not stipulate that New Jersey, in constructing wharves, should not interfere with navigation, but gave her exclusive juris-*

diction, relying on the United States Courts to prevent obstructions to navigation if it was attempted.

4. It was, and is, proper, if either State obstructed navigation in building docks on its side of the river, that the United States Courts, as a common arbiter between them, should determine all such questions, *and so the Treaty and the Act of Congress left it, and intended to leave it.*

Twelfth.—The exclusive right of property being in New Jersey, and the jurisdiction of that State *of* as well as *over*, wharves, docks and improvements *to be made*, being exclusive, the case is narrowed to this inquiry :

Can the Courts of New York take cognizance of, and will they entertain, an action to *abate* an alleged nuisance on the shore of New Jersey, it being on the property of that State, within its boundaries, and the subject of its *exclusive jurisdiction*, on the ground that it interferes with the navigation of the bay or river, or gives out an offensive or unhealthful odor?

This Court has not jurisdiction.

1. So far as the *question* depends on the allegation of *nuisance*, it is not other or different than it would be if it were sought to abate a nuisance on the New Jersey shore *above* Spuyten Duyvil Creek, on allegation of injury to navigation or health.

2d. Such jurisdiction has never heretofore been claimed or exercised.

3d. The judgment or decree of the Court could not be executed.

Resistance and conflict of State authorities would be the inevitable result.

4th. A Court of Equity, even if of opinion that (having the alleged wrong-doer before it) there was a technical right to proceed, should decline jurisdiction in such a case.

5th. The *County of New York* extend no further than the middle of the river and bay.

It only extends "to the west bounds of the State." (Rev. Stat., 5th Ed., p. 130.)

The "boundary" of the State is fixed by the Treaty in the middle of the river and bay. (Art. 1, Rev. Stat., 5th Edition, page 81.)

The First Judicial District embraces only the City and County of New York.

An action to abate a nuisance is in its nature local. (See *infra.*)

The Sheriff of New York can execute no process without the *boundaries* of the State, except such as is in terms described in the seventh Article of the Treaty.

6th. Admitting that the maxim "*sic utere tuo ut aliemum non lædas*" is a rule of international law as truly as a rule between citizens, such admission gives no ground of jurisdiction to this Court.

The present action is not the remedy. In such cases redress is to be obtained by appeal to the State itself,—by remonstrance and by negotiation.

If these fail, resort must be in general to force of arms.

So far as navigation is alleged to be affected,

and that is made the ground of invoking the interference of a Court of this State, such a ground of interference might, as will be alleged, of an obstruction to navigation on the coast of Massachusetts, or of England, if the alleged wrong-doer was in person within this County.

The wrong, if any, is common to all mankind, who have the same right to navigate the water.

In this country the remedy is peaceful, controversies of this nature are within the express jurisdiction of the Supreme Court of the United States.

7. Practically the contest here is between the two States, New York and New Jersey, to settle the construction and effect of this treaty.

But New York cannot implead the State of New Jersey in our Courts, nor compel her appearance, nor enforce against her such a decree as is sought.

This is an attempt to accomplish the result indirectly.

It is not fitting nor proper for the Courts of either State to assume jurisdiction, to control the use or improvement of real estate within the boundaries of the other.

If there be any wrong the remedy should be pursued in that high tribunal which is clothed by the Constitution of the United States with jurisdiction—a complete determination of the controversy cannot be had in the State Court.

See Opinion of Judge Potter, folios 29 to 41.

The subject over which jurisdiction is claimed is real estate, and its use and enjoyment.

1. It follows from the principles already stated and is an incontrovertible rule of International Law, that real estate within the *territorial limits* of a State is governed by the laws of that State.

Where New Jersey exercises her right to construct wharves, reclaim lands, &c., the jurisdiction of New York is *pro tanto* displaced.

See U. S. *v.* Crosby, 7 Cranch., 115.
Clark *v.* Graham, 5 Wheat., 597.
Kerr *v.* Mason, 9 Id., 566.
Holmes *v.* Remsen, 4 Johns. Ch., 460.
20 Id., 254.
Hosford *v.* Nichols, 1 Paige, 220.
Chapman *v.* Robertson, 6 Id., 627, 630.
4 Cord., 510, 527, n.

2. The jurisdiction conferred on New York, is not inconsistent with the right of New Jersey to make wharves, reclaim lands, &c.

That jurisdiction was of waters and lands under water, as *waters*, and lands *under water*.

When in fact reclaimed, the jurisdiction does not embrace them.

e. g. Suppose an action of ejectment between two claimants of such reclaimed lands, could the Courts of New York for the County of New York entertain such an action?

3d. The action is local.

Real action must be brought in the place *rei sitæ*.

In respect to immovable property every decree of a tribunal without the territorial limits of the State is entirely nugatory, and incapable of enforcement *in rem*.

Story's Conflict of Laws, § 551.

So of mixed actions so far as they concern the reality.

Story, § 552.

An action on the case for an injury to real property situated in another State, cannot be maintained in the Courts of this State.

Watts *v* Kinney, 6 Hill, 82.

23 Wend., 484.

So actions although brought merely for damages occasioned by injuries to *real* property, as trespass or case for *nuisances*, &c., are *local*.

1 Chit. Pl., 298, Ed. of 1833.

Livingston *v.* Jefferson, 1 Brock, 203.

4th. The cases which permit a Court of Equity to hear and determine the rights of persons who may be within their jurisdiction by a decree *in personam*, to be executed *in personam*, do not apply to this case.

An action to recover possession by decree *in personam* that defendant surrender the possession of lands out of the State, would be practically ejectment in a new form.

The distinctions pertaining to this subject are clearly stated in Gardner *v.* Ogden (22 N. Y., 327).

And in Cumberland Coal Company *v.* Hoffman Steam Company (30 Barb., 159), it was held that the Courts of this State *would not take* jurisdiction of an action between companies of another State to set aside *for fraud* a conveyance of lands in such other State.

This action is in substance a proceeding *in rem.* A decree *in rem.* is sought.

The abatement of the alleged nuisance is to be done by acting on the property itself.

That cannot be compelled by any process against the defendants.

This Court can commission no officer to execute such a decree not only without the County of New York, but within the declared boundary of New Jersey.

See also opinion of Judge Potter on the subject at folios 104 to 106.

The judgment of the Court of Appeals of New York should be affirmed, with costs.

JOHN C. DIMMICK,
Of Counsel for Defendants in Error.

Supreme Court of the United States.

No. 492.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Defendants in Error,

ads.

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs in Error.

OPINIONS

OF THE

COURTS OF THE STATE OF NEW YORK.

FREDERICK T. FRELINGHUYSEN,
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New York:

EVENING POST STEAM PRESSES, 41 NASSAU STREET, CORNER LIBERTY.

1871.

Supreme Court. 1

THE PEOPLE OF THE STATE OF NEW YORK,

agst.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

NEW YORK SPECIAL TERM,
June, 1866.

This is a demurrer to a complaint. The complaint alleges that the defendant is a body corporate, duly organized, created, and existing under and by virtue of the 2
laws of the State of New Jersey, and has its place of business in Jersey City, and other places in the State of New Jersey; and also in the City of New York. The plaintiffs, by their Attorney-General, allege: "That the defendant is a body corporate, duly organized, created, and existing under and by virtue of the laws of the State of New Jersey, and has its place of business in Jersey City, and other places in the said State of New Jersey, and also in the City of New York. That on the sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three, an arrangement was entered into between Benjamin F. Butler, Peter

Augustus Jay and Henry Seymour, Commissioners duly appointed by the State of New York, and Theodore Frelinghuysen, James Parker, and Lucius Q. C. Elmore, Commissioners duly appointed by the State of New Jersey, to settle the boundary line between those two States, which agreement was duly ratified and confirmed by both States, viz: By the State of New York, by an Act of the Legislature of that State, entitled "An Act to confirm the agreement entered into by the Commissioners appointed by this State, and Commissioners appointed by the State of New Jersey," passed February 5, 1834, and by the State of New Jersey, by a similar Act passed by the Council and General Assembly of that State, on the 26th day of February, 1834, and which agreement was, by an Act of Congress of the United States, approved June 28, 1834, assented to on the part of the United States, as hereinafter mentioned, and that among other things contained and provided for in said agreement was the third article thereof, reading as follows, viz:

ARTICLE THIRD.—The State of New York shall have and enjoy exclusive jurisdiction of and over all of the waters of the Bay of New York, and of and over all the waters of the Hudson River lying west of Manhattan Island, and to the South of the mouth of Spuyten Duyvel Creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property, and of the jurisdiction of the State of New Jersey, that is to say:

1. The State of New Jersey shall have the exclusive right of property to and in the land under water lying west of the middle of the Bay of New York, and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

2. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks, and improve-

ments made on the shore of the said State, and of and 6
over all vessels aground on said shore, or fastened to any such wharf or dock, except that said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York, which now exist, or may hereafter be passed.

3. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters, provided that the navigation be not obstructed or hindered.

And the plaintiffs further show to the Court, that by the Act of Congress, approved June 28, 1834, it was en- 7
acted by the Senate and House of Representatives of the United States, in Congress assembled, that the consent of the Congress was thereby given to the said agreement, and to each and every part and article thereof, provided that nothing therein contained should be construed to impair or in any manner affect any right of jurisdiction of the United States in and over the islands and waters which form the subject of said agreement, as by the said Act of Congress approved as aforesaid, reference being thereunto had, will more fully appear.

And the plaintiffs further say, that the said third article of said agreement is now of full and binding 8
force upon the said two States, and the citizens, inhabitants, and incorporated companies of each respectively, the same never having been amended, altered or modified.

And the plaintiffs would further show to the Court, that the Central Railroad Company of New Jersey, defendants herein, without any grant, permit, or authority from the plaintiffs, and without any right, have, for five years last past and upward, been infringing, encroaching upon, and violating the jurisdictional rights of the plaintiffs, and obstructing the navigation of the waters of said bay and river, by taking possession of, and appropriating to its own exclusive use, about eight hundred acres of the land and water situated next adjoining

9 southerly the property used and occupied by the Morris Canal and Banking Company, and at the southerly extreme of the Jersey City wharf line, and all lying in one body west of the middle of the waters of the bay of New York and the Hudson river; the whole area so taken possession of being included in that part of the territory south of the mouth of Spuyten Duyvel Creek, over the land and waters of which exclusive jurisdiction is by said third article given to the plaintiffs.

That the said Central Railroad Company of New Jersey have, since they so took possession, displaced the waters over said lands by erecting docks, piers, and other structures, and by filling in with earth, stone, rubbish and other materials, and in this manner creating
10 and forming solid ground of earth, stone, rubbish, and timber of about eight hundred acres. That the said defendant has connected this made ground with the main shore of New Jersey by a wooden trestle work, about one mile in length, on which it has placed a railroad track for the passage of cars, and does now run its engines and railway cars to and from said made ground.

And the plaintiffs further say, that much of the material with which said made ground is formed, consists of the dirt, filth, and debris of Jersey City, and other parts of New Jersey and of New York; and that at times when westerly or northwesterly winds are prevailing, the exhalations and stench arising from said deposits,
11 are blown over the populated parts of territories belonging to the plaintiffs, producing disagreeable odor, and affecting injuriously the sanitary condition of the inhabitants thereof, and of persons navigating the waters of the Bay of New York and Hudson River.

And the plaintiffs further show to this Court, that the said Bay of New York, and the said last mentioned part of the Hudson River, are arms of the *sea*, in which the tide ebbs and flows; that previous to said filling in and erection of said structure, the natural depth of the waters thus encroached upon and displaced was from one to twenty-four feet, and were actually navigable by vessels

of the largest size in most parts thereof, and were it not 12
for the said filling in and structures of said defendants, would be so in many parts of the same, where those structures are, and in other parts of the same, where said structures are and made ground is formed, would be so navigable for vessels of three hundred tons burden and under, were it not for said structures and filling in.

And the plaintiffs aver and insist that the said bay, and that part of the Hudson River, south of the mouth of Spuyten Duyvel Creek, is a public highway, common to all of the people of the State of New York, and to the people of other parts of the United States, and that they, the said people of the State of New York, have the right to the use of these waters, as existing in their natural 13
channel, and as they existed in the primitive spread and shape, not only for purposes of navigation but also for fishing and other uses to which the said waters might be put; and the plaintiffs further aver and insist, that in so far as the said acts and structures of the defendant prevent the said people of the State of New York, from using and enjoying said common and public right of navigation, fishing, and other uses to which the said waters might be put, to and including the low-water mark in and along the New Jersey shore thereof, the same is a common and public nuisance to the said people of the State of New York, formed and erected within their sovereign jurisdiction, and that they otherwise 14
form and constitute a common and public nuisance by narrowing the channel of the said river and bay, and in other respects impairing and obstructing the use of those waters, and that as such nuisance, the plaintiffs are entitled to the interference of the Honorable Court to abate the same, and an injunction against the further continuance and extension thereof.

And the plaintiffs further say, that although the said defendant has been frequently notified to desist from these encroachments upon the waters of the said Bay of New York and Hudson river, and these infringements upon the sovereign territorial right of the plaintiffs, yet

15 the said defendant is now actually engaged with a large force of men, teams and implements, in filling in the waters of said bay and river under the said trestle work, and at many points on each side thereof, with earth, stone, rubbish, and other materials, and designs and intends thus to fill in the whole space of water between said made ground above described, and the eastern shore of the State of New Jersey, which, when completed, will form artificial and made ground to an amount of superficial area of about sixteen hundred acres in one body, and running into the bay easterly to a distance of about one and a half miles; all of which actings and doings of the defendant, the plaintiffs claim
16 and insist are infringements and encroachments upon their jurisdictional rights, are detrimental to the interests of the people of the State of New York, work a serious injury to the harbor of New York, as against the spirit and meaning of the third article of said agreement herein above set forth, and tends to the manifest wrong and injury of the plaintiffs.

Wherefore the plaintiffs demand judgment that the said defendant be decreed to abate the nuisance hereinbefore set forth, and move the earth, stone, rubbish, timber and other obstructions, with which it has so filled in the said bay and river, and to place the said bay and river in the same condition, in all respects, as the same were in before the defendant had commenced its opera-
17 tion upon, and in the said waters, and that the said defendant, its agents, officers and employees, and all others acting under them, may be perpetually restrained by writ of injunction issuing out of this Court from using and occupying the docks, made ground, railroad, trestle work, and other improvements and erections made by the defendant in the Bay of New York and Hudson River, hereinbefore described; and also that the said defendant may be perpetually restrained from filling in with earth, stone, rubbish, timber and other materials, any part or portion of the waters of the Bay of New York, and of the Hudson River, west of Manhattan

Island, and to the south of the mouth of Spuyten Duyvel 18
Creek to the low water mark on the westerly or New Jersey side thereof, and from obstructing or in any manner altering the natural lay or run of said waters, and shores thereof; and that it may be determined and decreed by this Honorable Court that the plaintiffs are entitled to the exclusive jurisdiction and right of sovereignty over all that part of the waters of said bay and river, described in the third article of said agreement hereinabove contained, and over the lands covered by said water, and that the natural course of said bay and river, and shores thereof, within the parts and territories described in said third article, cannot be obstructed or 19
altered without the grant or consent of the plaintiffs, and that the plaintiffs may have such further or such other relief as the nature of the case may require, and as shall be just and equitable, with the costs of this action.

The decision of this case necessarily involves the construction of an agreement or treaty entered into between the States of New York and New Jersey, for the purpose of settling their boundary lines by commissioners appointed by the respective States for that purpose, and which agreement was ratified by an Act of Congress (Chap. 126, Laws of 23d Congress), and confirmed by the States of New York and New Jersey, by Acts of 20
their respective Legislatures, in February, 1834 (Laws of N. Y., p. 8, chap. 8), the provisions of which will be referred to in the opinion.

J. H. Martindale,
Atty. Genl. for Pltffs.

F. J. Frelinghuysen & Woodruff,
For Defendants.

Potter, Justice: Three causes of demurrer are assigned by the defendants.

First.—"Want of jurisdiction of the person of the defendant."

21 *Second.*—"Want of jurisdiction of the subject of the action."

Third.—"That the complaint does not state facts sufficient to constitute a cause of action."

In the view I have taken of this case, it is quite difficult to examine these causes separately; they will, therefore, be substantially discussed together.

One principal point in the first cause of demurrer, if taken alone, even if good, does not reach the entire merits of the question, which both parties are desirous
22 of having considered. It involves but a question of practice as to the bringing a foreign corporation into Court, and rests so much in the obscurity of doubt, that, for the present, I have passed it by to consider the more important questions raised by the other causes of demurrer assigned—and, first, that of jurisdiction by this Court of the cause of the action.

The objection raised by this point is, not that a Court of Equity has not jurisdiction of an action of the *nature* of that set forth in the complaint, but that it has no jurisdiction of the particular subject therein complained of—that the Court has no power to make or enforce any decree in relation to the *locus in quo*.

23 Though this case is nominally a case between the State of New York and a foreign corporation, its importance can only be appreciated when it is seen that, practically, a Court of Equity of one State is called upon, and is in effect required to settle the disputed question of the boundary line between two sovereign States—one of them being the State in which, only, such Court of Equity can exercise jurisdiction, the other State not being a party to the action.

This, it is obvious, is calling upon the Court to perform a duty of great delicacy. It is called upon to declare the law which, if established, is to be the law for each State as against the other.

It is a duty which, upon the first reflection, common

propriety would seem to dictate should be performed by 24
a Court having equal jurisdiction over both States, and where both should be made parties, by a Court in which each of the States should have equal confidence, and from whose decision either State could directly appeal from the judgment to be rendered, and in which both parties could have all the advantages of the local laws of the State in which the action should be pending. This, I think, cannot be done in this case.

By our Code of Practice, Section 122, it is provided, that the Court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy 25
cannot be had without the presence of other parties, the Court must cause them to be brought in. The demurrer in this case calls for the adjudication of legal and substantial rights and interests between parties, one of whom cannot be brought into this Court as a defendant, though the nominal defendant may be properly here. Before this Court can determine whether it has jurisdiction to act at all, it must actually give construction to an Act of Congress, involving the provisions of a treaty between the States of New York and New Jersey in regard to the boundary line between those States; and in the absence of New Jersey as a party, the Court must 26
adjudge and determine the *locus in quo* to be within the territory and jurisdiction of the State of New York, so that in effect it must decide against New Jersey before it can proceed to give judgment in favor of the plaintiff.

There seems, therefore, to be a legal impropriety in having one of two contending parties judicially to determine its rights as against the other.

It is a well known maxim or principle given for the interpretation of deeds and treaties "that neither the one or the other of the parties interested has a right to interpret it according to his own fancy." *Vattel Max.*, 3 B., 2 Chap. 17. Nor can the Court cause the State of

27 New Jersey to be brought in as a party in pursuance of the provisions of § 122 of the Code above cited, for the reason that an order so to bring in that State as a party, and the bringing it in accordingly would deprive this Court, by virtue of that very order, of jurisdiction to decide the case at all; it having no jurisdiction to hear or decide an action between sovereign States. *U. S. Cons., Art.* 3, *Sec.* 2. So it will be seen that the State of New Jersey cannot be allowed the benefit of this provision of our Statute, a right allowed to all other suitors, viz., that of being brought in as a party.

And though it may appear to this Court that the *locus*
28 *in quo* is within the State of New York, still its judgment must be, "by saving the rights of the State of New Jersey." Code, § 122. And should the Court give its decision as the right appears to them, and be in error in this regard, its judgment, if attempted to be carried out, would be ineffective and might bring a conflict between the authorities of the two States.

In such case, resort must still be had to the Federal Courts to settle the question. The rights of the State of New Jersey cannot be prejudiced by an adjudication of this Court.

This case to be decided is strikingly analagous to that
29 of an action brought by the claimants to the title of lands or real estate against the tenants or occupiers of such estate, holding the same under another and a conflicting claim of title, for injuries done to the reversion by such tenants without having joined their landlord as a party to the action; and where, upon the face of the complaint, it clearly appears that the title of the landlord of such tenants is directly involved and must be decided as a matter of law. The Court, in such case, would order the landlord of the tenants to be brought in as a party.

If the case was reversed, and the defendants had brought their action in this Court, against individuals in this State for any injury or disturbance to their structures, the Attorney-General, as representing the State of

New York, would have been a necessary party. *Davis* 30
vs. *The Mayor of New York*, 2 Duer, 663, S. C. 3 Duer, 121, 157, *et sequiter*. *Shaver* vs. *Brainard*, 29 Barb., 25. And this is the rule, even though the defendants may be non-residents. *Sturtevant* vs. *Brewer*, 17 How. Pr. R., 571. 4 Paige, R., 75-6-7. 1 Peters R., 149.

I think, therefore, that a complete determination of the controversy cannot be had without the presence of the State of New Jersey as a party. This appears from the provisions of the treaty which we are called to pass upon.

The complaint charges, among other things, that the 31
defendants have been, and are erecting structures that interfere with the navigation of the Bay of New York and Hudson River, and ask relief against this act. We may take judicial notice, I think, that the waters of this bay and river, at the place complained of, are navigable waters in the maritime sense of that term; if so, this would seem to make it a question affecting commerce, the power to regulate which is conferred upon Congress; and though Congress has passed no act in execution of this power to regulate commerce between the several States, still the action could have been brought in the Federal Courts, and New Jersey, as a body politic, could then have been brought into a Court, where her rights, 32
under this treaty, could have been adjudged. It is true, that there are other matters of injury alleged in the complaint to have been done against the plaintiff, as to which no doubt a Court of Equity can properly take cognizance, such as an encroachment upon jurisdictional rights, and the commission of a nuisance thereon; but these injuries are mingled with charges which appear to me to be more properly within the province of Federal Courts and within their jurisdition to determine; that the duty of severing such injuries set forth in the same complaint from those that are not so within the jurisdiction of the State Courts; and of affording a proper

33 remedy thereon, is exceedingly embarrassing, if not practically impossible. The whole character of the injuries complained of is most clearly that the whole question comes peculiarly within the legitimate sphere of that tribunal, which is clothed by the Federal Constitution, (and by the consent of the States whose rights are thus brought in question,) with authority fully to hear and determine the controversy, and to whose determination each State would yield cheerful obedience.

Even though it may appear that for some of the causes set forth, a State Court of Equity might entertain jurisdiction, it would have been more eminently proper that an action of this nature should have been brought to the
34 Federal Courts. But suppose we are in error in the views we have above expressed; we are then called upon to give judicial construction to the provisions of the treaty made by the commissioners on the parts respectively of the States of New York and New Jersey, ratified by these States respectively, and by an Act of Congress. If, upon an examination of the several articles and provisions of the treaty, the *locus in quo* is found to be in the State of New York, or within the jurisdiction given to its Courts, then it is conceded this Court can take cognizance of the complaint, otherwise we have no jurisdiction of the subject of the action, and
35 in the latter view the complaint will have failed to state facts sufficient to constitute a cause of action. From the preamble to the treaty which is contained in the Act of Congress its purpose is therein expressed to be that "of agreeing upon and settling the jurisdiction and territorial limits of the two States." The preamble to the Act of this State is expressed to be "an agreement relative to the boundary line between the two States." (Act of February 5th, 1834.) Its object, therefore, is plain, and clearly expressed.

By the various provisions of the treaty, it is obvious that "*boundary line*" and "*jurisdiction*" are terms not intended to be identical in their meaning; and while the line which fixes the boundary between the two

States, with an exception, is unquestionable, and is not 36
controverted by the parties, "*jurisdiction*," a word of more questionable meaning in this treaty, is clearly not limited in its construction to the boundary line; and that it is qualified in its meaning according to its application to different objects mentioned in the treaty. Except for such qualifications in the meaning, use of, and application of the term "jurisdiction," the fixing of the boundary line between the States, would of itself control the meaning and effect of the term "*jurisdiction*."

The territorial limits of a State, as a natural and legal consequence, would limit its jurisdiction; but jurisdiction for certain purposes is granted to New York, 37
over territory within the State of New Jersey, and jurisdiction to the State of New Jersey, is in like manner and for certain purposes granted over territory belonging to the State of New York.

In other instances both States have a kind of jurisdiction, though for different purposes not in conflict, over the same territory. The boundary line of a State is, and must be, a fixed unchanging line, while jurisdiction for special purposes may be extended and changing.

From this statement it is seen that "*jurisdiction*" as used in this treaty, is intended to be a qualified term of greater or less power, the extent or limit of which—its 38
several meanings—is supposed to be the real difficulty that arises upon this point of the case.

This will be the more obvious as we proceed to examine the several articles of the treaty in their order, which are as follows:

"*Article First.*—The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point on the west shore, thereof, in the forty-first degree north latitude as heretofore ascertained, and marked to the main sea; shall be the middle of the said river—of the bay of New York—of the waters between Staten Island

and New Jersey, and of Raritan bay, to the main sea; *except as hereinafter otherwise particularly mentioned.*"

Omitting for the present an examination of the words in this article, ("except as hereinafter otherwise particularly mentioned,") it must be conceded that by the force of this article the structures complained of are within the territorial limits of the State of New Jersey. They are easterly of this established dividing line between the States. The sovereign and unqualified proprietorship of the *locus in quo*, therefore is *ex vi termini* in New Jersey.

How then do the Courts of the State of New York acquire jurisdiction to adjudicate, and how are its judgments to be enforced within the territory of another sovereign State?

If this first article stood alone—if the power and effect which its positive language confers is not destroyed or taken away by other provisions of the treaty, it is clear that the sovereign *power*, including full jurisdiction of the *locus in quo*, is in the State of New Jersey, and that such power and jurisdiction is exclusive and unqualified. I need not cite authority to sustain a proposition so elementary, nor to prove that such jurisdiction extends to lands under water, in the sea, and in navigable rivers. Nor will the primary and fundamental maxims of international jurisprudence be controverted, that within the territorial limits of a State its own authority is supreme and exclusive of every other State, and that such State possesses the exclusive authority to regulate the manner of holding and using property, personal as well as real, within its own territorial limits; and the power must follow to determine and administer the remedies and modes of redress for any use or appropriation of real estate which is not warranted by its own laws, and also to sustain and uphold where its own laws give their sanction.

And this absolute proprietorship includes the right to build, or permit to be built, docks, wharves and piers, and indeed, to make, or permit to be made, the very

structures complained of, subject to the power of the 42
Federal Government and its Courts to restrain encroachments upon, or unjust interferences with the rights of navigation and commerce.

The plaintiff claims that jurisdiction is conferred over the *locus in quo* to the State of New York, and to her Courts by virtue of the provisions of the third article of this treaty. It may be well, however, to introduce the articles of this treaty in their order.

The second is as follows:

"*Article Second.*—The State of New York shall retain its present jurisdiction of and over Bedloes and Ellis Islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above 43
mentioned, and now under the jurisdiction of that State."

It may be well as we proceed, and at this point, to explain the meaning of the words at the conclusion of the first article—"except as hereinafter otherwise particularly mentioned." These words are explained to my mind by the language of the *second* article, and by other matters of which we can take judicial notice. Previous to this treaty, the boundary line of the State of New York, as laid down in the Revised Statutes of this State, of 1830, chap. 1, vol. 1, section 1, pages 62 to 65, made the line, as between New York and New Jersey, to run "*in such a manner as to include Staten Island and the* 44
islands of meadow on the west side thereof, Shooters Island, Long Island, the Isle of Wight, now called Gardiners Island, Fishers Island, Shelter Island, Plumb Island, Robins Island, Ram Island, The Gull Islands, and all the islands and waters in the Bay of New York and within the bounds above described."

This description included Bedloes and Ellis Islands in New York, and New York had always claimed title to these islands, and had always exercised jurisdiction over them, and had claimed them to be within her territory; and these, together with Governors Island, had been

45 actually ceded by the State of New York, before that time, to the United States, by an Act passed April 15th, 1800, giving the *latter* jurisdiction over them. So that when the treaty line in question was agreed upon, it cast Bedloes and Ellis Islands upon the New Jersey side of this treaty line, and, consequently, it was necessary to have them excepted. In order to save New York the benefits of her former claims thereto, the language of this second article was, doubtless, regarded as appropriate and as a compromise of that question, each party being willing to leave the question of sovereignty and actual proprietorship unexpressed, and leave the juris-
46 diction of the United States undisturbed. The *then present jurisdiction* of New York over them was reserved, granted or conceded by the one party and accepted by the other, and such agreement was well expressed in this second article.

And this explanation may be sufficient to reconcile and give effect to the language of exception at the end of the first article, and may well be held to mean, as its language clearly imports, that the boundary line so fixed shall be the boundary line of sovereign territory, of propietorship, and all incident rights, "*except as hereinafter otherwise particularly mentioned*," to wit, in so far as each party reserves to itself or concedes to the other
47 certain subordinate rights in respect to navigation, to quarantine, to fishing, to docks and wharves, and to criminal police laws. This construction brings in to use the language of that exception contained in the first article for a reasonable and sensible purpo e. It can only be otherwise used to confuse and create doubt as to its meaning.

The *third* article of this treaty, by which the plaintiff claims the jurisdiction of the subject matter set forth in the complaint, is that which has received the most consideration upon the argument of this case, and is as follows:

"*Article Third*—The State of New York shall have

and enjoy exclusive jurisdiction of and over all the waters 48
of Hudson River, lying west of Manhattan Island, and to the south of the mouth of Spuyten Duyvel Creek, and of and over the lands covered by the said waters, to the low-water mark on the westerly or New Jersey side thereof, *subject to the following rights* of property and of jurisdiction of the State of New Jersey, that is to say:

1st. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the Bay of New York, and west of the middle of that part of Hudson River which lies between Manhattan Island and New Jersey.

2d. The State of New Jersey shall have the exclusive 49
jurisdiction of and over the wharves, docks and improvements, made and to be made on the shore of the said State, and of and over all vessels aground on said shore or fastened to any such wharf or dock, (except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State of New York which now exist, or which may hereafter be passed.)

3d. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters; provided that the navigation be not obstructed or hindered."

I am free to confess to some little doubt as to the 50
meaning, and of a construction that will reconcile *all* of the provisions of this article. The boundary line drawn in the language of the first article makes the lands westerly of that line within the absolute sovereign boundary, and as a consequence within the jurisdiction of New Jersey. Does the language of this article take that back, and make a new line to which the absolute and sovereign jurisdiction of New York extends, to wit: to low-water mark on the New Jersey side? I think not. Though the the terms "*exclusive jurisdiction*," are used

51 in this article, it is expressly made *subject* to the right of New Jersey to have "*the exclusive right of property*" west of the boundary line so drawn by the first article; so that it cannot be made to mean the absolute and sovereign right; it must be a right qualified and limited. If the distinguished and intelligent commissioners had intended to confer on the State of New York absolute sovereignity over this *locus in quo*, as it is to be presumed they understood the power of language, it would have been much more simple, artistic and clear to have drawn the description of the boundary line between the States in language that would have expressed the intent:— that it should be at low-water mark, on the New Jersey
52 side. This they did not do. But in *terms* they have given *exclusive jurisdiction* over and to the water, and land under water to the one State, and *the exclusive right of property* to another State, over the same territory. It is the category or predicament in which this case is thus placed, produced by the use of these terms, seemingly in conflict, and as to which the parties claim different interpretations, that calls for judicial aid.

I understand that the rules in part by which the Court must be governed in the performance of this duty of giving construction to the language of a treaty, or a statute (and this is both) is that in cases where doubt seems to arise from the language of one particular clause or section, the whole treaty or statute should be read to-
53 gether, in order to ascertain its object and intent, and for this purpose we are to compare all the parts together, and then, if possible, so to interpret as to prevent contradiction, or inconsistency; and also, if practicable, so as to give effect to every clause, section, and part of it; and so as to reconcile the different provisions with each other as to make the whole consistent and harmonious. The manifest intent of the parties being the chief object; the preamble may be referred to to ascertain this intent.

Following these rules, we see that the Act of this State authorizing the appointment of Commissioners on the part of New York, (Laws of 1833, ch. 6,) was to "nego-

tiate and agree respecting the territorial limits and 54
jurisdiction of the State of New York and the State of New Jersey." The Act of the State of New Jersey for the same purpose has the same title. The preamble of the treaty, as we have stated, is "of agreeing upon and settling the jurisdiction and territorial limits of the two States," and the Act of ratification of the treaty by this State is entitled "the Act to confirm the agreement, &c." If but one of the terms "*jurisdiction*" or "*boundary line*" had been used, or if it appeared they were intended to be synonymous and identical, the interpretation might be easy, but as we have shown that they are not so, we must give to each term its appropriate meaning. There 55
is no difficulty in determining where the political *boundary line* is between these two States. That line is clearly defined in the first article. On either side of that line these States are respectively the sovereign proprietors and owners, New York on the easterly and New Jersey on the westerly side thereof. But this line does not, by the terms of this treaty, settle the *jurisdiction*, in all respects, between these States. New York has certain jurisdiction west of this line, and New Jersey has *jurisdiction* east of it.

To define the meaning of these *jurisdictions*, and what powers the States respectively possess by virtue of those terms, and what they respectively have parted with, is 56
the main point in this case. By this third article "New York shall have and enjoy exclusive jurisdiction of and over the waters of the Bay of New York, and of and over all the waters of the Hudson River lying west of this line, and of and over the lands covered by said waters to low water mark on the New Jersey side." And by the same article New Jersey shall have the exclusive right of property in and to the lands under water up to the *boundary line* between the States, as fixed by the first article. Here, then, is presented the case of the sovereign State of New Jersey, whose territorial line and proprietorship of the land is fixed and undoubted, yielding to the State of New York exclusive jurisdiction over

57 the waters to a certain line, and to the land under the waters to the same line within her own boundary. Under these provisions of the treaty the State of New York brings an action, in her own Court of Equity, against a body corporate of the State of New Jersey, for an injury done within the territorial bounds of the State of New Jersey, upon lands, the proprietorship of which, by the treaty, is conceded to New Jersey, a proceeding *in rem.* to abate a nuisance, claiming jurisdiction for her Court of Equity on the ground that it is a nuisance. This presents the whole legal view of this case.

It is conceded that if judgment be given according to the plaintiff's claim, the executive power which must be
58 called into exercise to abate the nuisance must be exercised by some officer sent from the State of New York, and doubtless from the City and County of New York, in which County the venue of the action is laid. In looking at the boundaries of the County of New York, (Rev. Stat., marg. page 2, page 130, 5 Ed.,) the *locus in quo* does not seem to be within that county. If I am not in error in this statement, (though all the maps I have consulted confirm this view,) a judgment in favor of the plaintiff could not be executed by the Sheriff or other local officers of the County of New York, except by adopting the theory of the plaintiff that by the terms of the treaty the *locus in quo* is not only brought within the
59 jurisdiction of the State of New York, and within the jurisdiction of her Courts, but also, that for this purpose it is within the limits of the County of New York; otherwise the territory is not within the legal limits of any one of her counties. By the 123d section of the Code such an action must be tried in the county in which the subject of the action, or some part thereof, is situated, and, though this *fact* appearing may not be cause for demurrer, I do not see how the action can be tried within the County of New York, or its judgment be executed if given, unless this construction, as claimed by the plaintiff, be given to it. But suppose I am in error in these suggestions that the territory is not within any one of the

counties of the State, we come back to the question of 60
the meaning of "exclusive jurisdiction over the waters and over the lands covered with water," in the State of New Jersey given to New York.

It is clear that this "exclusive jurisdiction" was intended to be something less than that entire and absolute jurisdiction which is incident to State sovreignty, because the sovereign power has not been taken away, and the political power of New Jersey still remains over this territory; and because this exclusive jurisdiction is expressly declared to be *subject* to the jurisdiction of New Jersey, in her right of proprietorship and ownership of the lands, and to the exclusive jurisdiction of New Jersey over wharves, docks and improvements made and to be made on the *shore* of the said State, and 61
over all vessels aground on said shore, and fastened to said wharves or docks, except that said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State of New York, which then existed, or which might thereafter be passed; and it was also made subject to the exclusive right by New Jersey, to regulate the fisheries in said waters, only that New Jersey could not thereby obstruct navigation.

There is nothing, therefore, to prevent giving the construction to these words, "jurisdiction" in the treaty, that is, according to the common, natural, and well-defined meaning of these words. It is the "authority to judge," "the power to act judiciously, and to administer justice" over the subject thus limited and specified 62
in the treaty; and I think this also includes the power to execute the judgment and enforce obedience to the judgment, if the judgment be in a Court having jurisdiction of the *subject* of the action, and having power to enforce the remedy demanded. This construction will put in use and give full meaning to the words exclusive jurisdiction of and over the waters, and of and over the lands under water.

We must also give the same construction, and apply to proper use and give full effect and meaning, if possi-

63 ble to all the other words of the same article which gives to New Jersey the exclusive jurisdiction of property in the same lands, and also over the wharves, docks and improvements made and to be made on the shore of that State.

One of the distinct claims of the plaintiff is, that the structures complained of are an interferance by the defendants with the waters in the Bay of New York and Hudson River; that they have not asked and have not obtained consent of New York so to use and make such structures; that they prevent the spread of the said waters, and interfere with navigation; that the defendants are not parties to the treaty, and have no title
64 themselves to the lands under the water, and cannot set up title in New Jersey as a matter of law, in their defence upon demurrer; and that New Jersey has no power to give consent to make such structures in said waters. The argument of the defendants is, that by the terms of the treaty in question, the State of New Jersey never ceded away, surrendered up, or parted with the right of herself, or that of her citizens, to construct wharves, piers, docks, and other improvements upon her shore, and did not intend thus voluntarily to cut herself and her citizens off from the right to carry on trade and commerce by means of the navigable waters which bound her eastern shores

65 The settlement of these conflicting claims of the parties is the determination of this main question in the case.

I cannot doubt, and therefore shall not hesitate to assume, without stopping to discuss the question, that before the making of this treaty, New Jersey, as a sovereign State, bounded upon tidal and navigable waters, possessed the common, natural and incident right and authority to construct wharves, docks, piers, and other necessary aids to commerce, upon her shores; nor do I understand the plaintiffs to take position contrary to this proposition. They rely upon the terms of the treaty

only, and claim that the jurisdiction asserted was granted thereby. 66

A right and privilege so valuable, so material to the commercial interests of a State, as that of her commerce by her navigable waters with other States, and with the world at large, to be yielded up to a rival and adjoining State, and herself to become, in fact, an inland State, without apparent consideration, or the expression of a real one, demands that the terms by which it is so surrendered should be expressed in strong and unequivocal language. If New Jersey, by this treaty, has deprived herself and her citizens of the right to build wharves, piers and docks upon the line of navigable water, then, in effect, she has abandoned all her substantial interests 67 in commerce upon water, for commerce upon navigable waters can only be conducted by means of these structures. The right of the defendant to erect the structures in question may be determined by the interpretation which is to be given to this part of the treaty. If the right to erect such works has not been parted with by New Jersey, then New York has no jurisdiction over the subject of the action.

It is very clear to my mind from the express terms of the treaty that New Jersey did not intend to yield up all her commerce by her navigable waters. She possessed at the time of that treaty, docks, wharves, and improvements to accommodate her business to water commerce, and it would be absurd to suppose, or to assume that wharves, a d docks and other such improvements, were not then located at the places where only they could be useful, for the purposes of such commerce; to wit, at the wharf line; or, as I understand it, at the line of navigable water; at the place where ships are laden and unladen. 68

As to all such wharves, docks, and improvements then made, the State of New Jersey who *then* had full jurisdiction within her territorial, limits, saw fit to protect herself, not only by retaining them in the express language of the treaty, "together with the exclusive juris-

69 diction of and over them," but also, of the right *thereafter* to make such wharves, docks, and improvements. This was reserved by the use of the words in the future tense, "*and to be made.*"

We are called upon to give effect to these words "to be made" also. They cannot be excluded. How can we give them full force, power and effect, in any other way, than to interpret this provision to be, that the "exclusive jurisdiction" over wharves, docks, and improvements made, and to be made" was not intended to be, and was *not* parted with, but on the contrary was retained in *terms* by New Jersey. This interpretation is
70 entirely consistent, in perfect harmony, and reconcilable with the granting exclusive jurisdiction to New York over the waters and lands under the water, *subject to the rights of New Jersey as above expressed.*

With this interpretation, there is no conflict, no inconsistency, and full effect is given to important words. This construction also, is an answer to the argument that as "exclusive jurisdiction" is given to New York over those waters, even to low water mark on New Jersey shore, and that the structures complained of amount to a displacement of those waters; that it is, therefore, an interference with navigations, which is claimed to be one of the violations of her rights.

The right of New York, it is true is exclusive, but is
71 subject to the exclusive reserved rights of New Jersey, as expressed in the treaty. That is, the exclusive rights of New York to the water and land are exclusive of everything, but the exclusive and specified rights of New Jersey to which the treaty declares they are subject. Such jurisdictions as are conferred by the treaty upon New York, are called in some of the books, "a police jurisdiction," and such it is clearly made by the Seventh Article of the Treaty. It authorizes criminal process issued against persons accused of offences committed within the State of New York, and on vessels within its jurisdiction to be served on parties being upon such waters. This power would have been unnecessary

to be thus expressed, if those waters were within the political or physical boundaries of the State of New 72
York, or within the County of New York, or within the "exclusive jurisdiction" of New York, other than for the limited and qualified purposes expressed in the treaty. This is the more clear, from another expression found in the said Seventh Article, which refers to the place in which such arrest may be made, as "waters within the exclusive jurisdiction" of the State of New Jersey, (except only when a vessel shall be fastened to the shore of New Jersey.)

This last expression "exclusive jurisdiction" in Article 7, I think means, *political or sovereign jurisdiction*, as distinguished from "judicial jurisdiction." 73

It is otherwise an inconsistent and useless expression.

If it be claimed that the demurrer admits as a fact the allegation in the complaint, that the structures complained of, are within the limits whereof exclusive jurisdiction is given to New York, it is sufficient to say, that so far as this may be a fact depends upon how the *law* shall first be found, to wit, whether by a proper interpretation of the treaty the *locus in quo* is within that jurisdiction. The complaint fully describes the place and claims the jurisdiction by virtue of the treaty and statute. The location of the place is a *fact;* the jurisdiction is a question of law. 74

If the claim of the plaintiff be valid and sound, that neither the State of New Jersey or her citizens can build structures in said waters below the point of low water mark on the New Jersey side, it may be replied that there is no allegation in the complaint that the structures are *in fact* below that point; nor can the Court assume to the contrary from the alleged distance to which such structures are extended into the said waters; nor even does the extraordinary area or quantity of surface which it is charged the defendants have so filled up, and the still greater quantity which they intend or threaten to fill up and make solid ground (startling as it does appear to the interests of navigation), establish the fact

75 that they have extended their improvements beyond, or intend to extend them beyond low water mark. Nor yet does it appear to the Court from the alleged displacement and prevention of the spread of waters which has resulted or will result from the making of said structures, that there is any other or greater displacement than is authorized by the reserved rights of the State of Jersey by the terms of the treaty.

It is, however, alleged in substance that the area so filled up by the defendants, but for such filling up and the obstructions caused thereby, would be navigable waters for vessels of the burden of three hundred tons and under. This I think is a *fact*, and is to be regarded
76 as admitted; but the difficulty I have found from the assumption of the fact is that I cannot judiciously determine from any alleged capacity or depth of water, that such depth or capacity makes a line below or above low water mark, nor that it excludes the right to build wharves, piers, docks, or other improvements upon the lands so covered with water for the use of commerce upon navigable waters; nor can the Court judicially declare that vessels of the capacity specified may not, in high tides, be floated or navigated on the surface between high and low water mark; so that in the absence of an allegation in the complaint that the structures in question are projected beyond the necessary point for the
77 construction of wharves suitable for water commerce, or that there is an unreasonable or unnecessary displacement of navigable waters, I cannot hold the allegation to be sufficient. The right reserved, or granted, to build wharves necessarily carries with it and by necessary implication reserves the right also to displace waters to the proper wharf-line as equally by trestle work as by solid ground. A wharf-line to be of value, must extend so far as is necessary to make a depth of water practicable for the use of commerce. If New Jersey has a right to make wharves at all, she has a right to the extent above mentioned, unless that be beyond the wharf line, which is not alleged. And although New Jersey is not

the defendant in this action, the right of the plaintiff to 78
invoke the aid of the Court to redress an injury can only be maintained by showing a title to complain and a right to demand its aid; and the defendants have a right in their defence to insist that the right and title claimed by the plaintiff is not in them, but is in another.

Conceding the right of New Jersey to her wharves, made at the time of the treaty, and the right to make wharves thereafter, it is argued that these rights are still limited to *the shore of New Jersey*, and that the distance alleged of one mile out into the bay cannot by any construction be deemed or held to be the *shore* intended by 79
the terms of the compact. The intent and meaning of this expression must, of course, be settled by construction. "Shore," in the literary lexicons, is defined to be "the coast or land adjacent to the ocean or sea, or to a large lake or river." "Sea shore," according to legal and maritime definitions, is "that portion of ground between ordinary high and low water-mark.' The language in this treaty which reserves to New Jersey that to which she had a natural right, is "the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made *on the shore of the said State*, and over all vessels aground *on said shore*, or fastened to any such wharf or dock." How are these consecutive
expressions to be interpreted according to the sense in 80
which the parties concerned must naturally have understood them when this compact was executed and ratified between them? We could not charge the distinguished Commissioners with a want of understanding, or of an intent so absurd as that the wharves, docks and improvements were to be constructed according to the literary definition of a shore, that is, upon the land adjacent to the ocean; and it would hardly be less absurd to suppose that they were to be built upon land, technically known in legal or maritime phrase as "sea shore," that is, land between high and low tides—land sometimes covered with water and sometimes not. Neither of the

above terms, however, *alone*, were used. The language employed is "wharves, docks and improvements made, or to be made *upon the shores of the said State*." This expression is explained, as to its locality, by the language which immediately follows it—"and of and over all vessels aground on said shore." This includes a place which at times certainly must be navigable. It contemplated not only that vessels may get "*aground on said shore*," but it also includes a place where *wharves and docks may be built, and to which such vessels may be fastened.* This explanation of the meaning of the "*shore of the State*," is conclusive in my mind. It cannot mean land adjacent to the sea, nor technically "*sea shore*;" and I shall, therefore, hold this language to mean that the State of New Jersey retained, and now possesses, the jurisdiction and right to build wharves and docks and improvements "upon the shores of that State," and that such shore extends to the wharf-line in the waters on the easterly line of said State. Unless this be the construction, it must also be held that New York has also cut herself off from the right to build wharves, docks and improvements on the shore of Staten Island, under the provisions of Article Five of the same treaty.

I have not stated all the reasons which have been considered, and which have brought my mind to the conclusion above expressed in regard to the proper interpretation of this treaty. I have already extended the review beyond what is usual in a Special Term opinion—but I will very briefly state a few other reasons. In looking at the jurisdiction and rights naturally belonging and incident to these States, severally and respectively, as States bounded upon navigable waters lying between them; looking at the rights that the parties respectively claimed and enjoyed previous to this treaty—and to the then threatened difficulties between these States in regard to the boundary line, of which we may take judicial notice; looking at the importance of the existence of pacific relations for their mutual and reciprocal benefits; looking at the necessity of avoiding conflicts arising from

doubts as to the actual boundary line upon water surface, 84
and of regulating the questions of jurisdiction between them so that each could enforce their laws in regard to police, to health, quarantine, fisheries, and navigation, which are expressed in the treaty; and looking at the object of the treaty, as expressed in the several preambles we have referred to, and as expressly limited to the settlement of boundary lines and jurisdictions, and which is entirely consistent with the objects mentioned in the body of the treaty and in the preambles; and in the absence of language in the preambles, or in the treaty, from which it would appear that the parties intended anything like the *ceding* or the *surrendering* up of territory, or of the natural and important rights and benefits of 85
either of them to their water commerce with other States and with the world. I have not been able to discover the intent on the part of either State to grant, to cede away, or to surrender to the other any such rights or benefits.

If I am right in the interpretation I have given to the three first articles of this treaty, and if I am right that the erections and structures complained of are within the jurisdiction which New Jersey before possessed, and which in the treaty she has reserved to herself, it must follow, as the necessary result, that even though it is admitted by the demurrer that the material with which the solid ground structures are formed "consists of dirt, filth and debris of Jersey City, and other parts of New 86
Jersey and New York, and also that the exhalations and stench arising from deposits so made are blown and carried by the prevailing westerly and northwesterly winds over populated territories of the plaintiff, and that they produce disagreeable odors; and that they affect injuriously the sanitary condition of the inhabitants thereof, and of persons navigating the waters of the Bay of New York and Hudson River, it is, notwithstanding all this, a nuisance over which this Court possesses no jurisdiction, and has no power to make its decree or judgment

87 to abate it, and none to enforce such a judgment upon the subject of this action, if made.

I have not thought it necessary to discuss the defendants' objection that the plaintiffs are estopped by long acquiescence from raising the question of the right of the defendants to make the structures in question. I do not think a party ever acquires the right to create a nuisance or to commit a wrong. This point, however, does not arise under the view I have taken. Nor have I weighed the argument of the defendants as to the cotemporaneous construction of the treaty by the State of New Jersey, and her citizens in making such improvements, and the implied assent of the plaintiffs, by
88 their silence in relation to such structures, hitherto. I am not at all certain that these matters are such, if true, as that we can take judicial notice of them, and if the facts stated be patent to the defendants, or even to the plaintiffs, the Court has no knowledge, *in fact*, of their verity.

The question involved is a grave and important one. Assuming the whole truth of the complaint, it is to be regretted that an injury to navigation, if it be one, and the dangers that threaten the sanitary condition of a populous city, if this be true, should not be restrained and abated.

I was deeply impressed on the argument, and in the
89 subsequent consideration of the case, with the magnitude and importance of the principles at stake, and with the questions of great public and private interest which are involved. It affects, directly and indirectly, the rights of the public and individuals; it affects the great interests of commerce, of navigation, and of the public health; but I have been brought to the conclusion for the reasons above given, that the demurrer is well taken, and that there must be judgment for the defendants.

P. Potter.

Supreme Court

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

THE CENTRAL RAILROAD OF NEW JERSEY.

New York—General Term—April, 1867.

Present—Hon. WM. H. LEONARD, Judge.
Hon. D. P. INGRAHAM,
Hon. J. SUTHERLAND, Justices.

This action is brought by the People of the State of New York against the defendants, to prevent encroachments in the Hudson River, on the westerly side adjoining the shore of New Jersey.

The complaint avers that the defendants are a body corporate under the laws of New Jersey. It then sets out the agreement or treaty entered into between New York and New Jersey as to the rights of each to the land and water in the Hudson River, south of Spuyten Devil Creek, and avers that the defendants, without any permit or authority from the plaintiffs, and without any

4 right, have for five years last past and upward been infringing, encroaching upon, and violating the jurisdictional rights of the plaintiffs, and obstructing the navigation of the waters of the Hudson River and the Bay, by taking possession of and appropriating to its own exclusive use about eight hundred acres of the land and water lying west of the middle of the waters of the Bay of New York and Hudson River, over which the plaintiffs have exclusive jurisdiction.

That the defendants have displaced the waters over
5 the land by erecting docks and piers and filling in the same, and have connected the same with the main land of New Jersey by a wooden trestle work about one mile in length.

It further alleges that this part of the Hudson River and the Bay are arms of the sea in which the tide ebbs and flows; that previous to the filling, the natural depth of the waters was from one to twenty-four feet, and was actually navigable by vessels of the largest size, and would be so in many parts of such filling.

6 It charges that the filing is made with materials affecting injuriously the sanitary condition of the inhabitants, and that such structures form a common and public nuisance, by narrowing the channel of the river and bay, and obstruct the use of the waters, and that as such nuisance they ask an injunction against its continuance and extension.

To this complaint the defendants demur upon the
7 grounds:

1st. That it appears from the complaint that the Court has no jurisdiction of the defendants.

2nd. That it has no jurisdiction of the subject of the action.

3rd. That it does not state facts sufficient to constitute a cause of action.

The case was heard at Special Term, before Mr. Justice Potter, who gave judgment for the defendants, and the plaintiff's appeal to this Court. 8

THE ATTORNEY GENERAL,
For the People.

L. B. WOODRUFF,
For Defendants.

INGRAHAM, J.:

The first ground of objection to the complaint is the want of jurisdiction over the defendants. 9

The defendants are a foreign corporation. If it were necessary to proceed against them by attachment to compel their appearance, the objection might have weight. Such is not this case. The defendants have appeared, and so far as bringing them into Court and within its jurisdiction, that has been done by their voluntary act.

When a foreign corporation by its officers comes within this State, it becomes subject to the laws of the State, and to the process of the Courts, and where such a corporation by its officers is guilty of a wrong, or commits a trespass within the State, I know of no rule by which such a corporation can escape the consequences of its illegal acts, by setting up that it holds its existence under a foreign government. 10

For the purpose of this question we must assume that the plaintiff's claim to have a right to the waters in the river where the defendants have taken possession of.

By the demurrer they admit having taken such possession, and that they threaten to continue such possession, and to extend it. 11

By the 13th Section of the Code, service may be made on the officers of a foreign corporation in this State, or where the cause of action arose therein. What mode of service was adopted does not appear from the complaint, nor is it necessary to state in the complaint

12 the mode by which it is expected to acquire such jurisdiction over the defendants.

We have these facts then, viz.: A claim of title to and jurisdiction over the waters, where the defendants have taken possession, they by their officers then being in possession, and without authority from the plaintiffs, show sufficient facts to give jurisdiction, if the process can be served on the defendants.

If there is an improper service, that must be remedied
13 by a motion.

Second.—The remaining grounds are, that the Court has no jurisdiction of the subject of the action; and,

That the facts do not constitute a cause of action.

The decision of these questions depends upon the views which are taken of the acts of the defendants, and to some extent render an examination necessary as to the right of the plaintiffs to maintain any action for acts done in the river, west of the central line thereof.

14 This right, if it exists is to be found in the agreement or treaty made between the States of New York and New Jersey, in the year 1833.

There is no doubt that in navigable waters where the tide ebbs and flows, the sovereign is the owner of the soil under the water, and of the waters which cover it, and where such waters form the boundary between two nations, such ownership is vested in each to the portion of the stream adjoining the territory, and extending to the centre.

15 These rights may be varied by treaty, or by original grants, or prior possession.

I do not deem it necessary to enquire what rights the State of New York possessed to this portion of the river prior to 1833. Whatever those rights were, they were all merged in the provisions of that agreement.

By that instrument the centre of the river and bay was adopted as the boundary line between the States of

New York and New Jersey, on that part of the river where these encroachments have been made. 16

By the third article of the agreement, the exclusive right of property in and to the land and water lying west of the middle of the bay of New York, and west of the middle of that part of Hudson River was declared to be the property of New Jersey.

Andb y the same article the State of New Jersey was to have exclusive jurisdiction over the wharves, docks, and improvements, *made and to be made* on the shores of that State. 17

If we were to stop here, there would be no difficulty in disposing of this case.

The title to the land under water in the sovereign includes all right to the waters over the land, and vests in the sovereign the sole right of disposition, and of course the right to control the encroachment upon such interest.

The other provisions however of this treaty alter materially the rights of the parties.

The first part of the third article gives to the State of New York exclusive jurisdiction, *over all the waters* of the bay, and all the waters of Hudson river, and of and *over the lands covered by said waters*, to low water mark on the New Jersey shore, subject to the right of property in the land therein given to New Jersey. 18

The whole case resolves itself into the inquiry, whether a jurisdiction in the State of New York exclusive over the waters of the river and over the land under the water, while the fee of the land has been vested in another party (New Jersey) gives a right of property therein sufficient to maintain an action for an encroachment upon it. 19

It must be remembered that these grants on both sides are between the sovereigns and are not subject to the ordinary rules applicable to grants made to a subject or citizen.

The sovereign power can grant all it possesses, or may grant a part and retain a part, and a grant of the land

20 to one and a reservation of the water to the other vests in the grantee all the rights which the sovereign originally had in the part granted, or reserve to the grantor all rights in the part reserved, which was not intended to be conveyed.

By the treaty the right to the soil is transferred to New Jersey, while the exclusive jurisdiction of and over all the waters of the bay and river to the low water mark on the New Jersey side thereof, and of and over the lands covered by the waters is granted to New
21 York.

The question then arises—What is meant by jurisdiction, and whether such grant of jurisdiction conveys any right which can be the subject of an action.

This jurisdiction cannot be the mere right to serve process, either civil or criminal, for that is provided for by Articles 6 and 7, and it is made co-equal to both the contracting parties, and is not exclusive.

It is the jurisdiction granted by one sovereign to another, and in that sense it means the right of exercis-
22 ing authority, of governing and controlling. This right is granted by the State of New Jersey to the State of New York, and the right by that grant is made exclusive both as to the land and water up to low water mark on the New Jersey shore; and this jurisdiction and grant is exclusive even of New Jersey, except in three particulars: One of title to the land under water; one of the jurisdiction over wharves, docks and improvements; and,

One of the fisheries.

23 These three rights are reserved to New Jersey. What are these rights? The right to the soil would prevent the State of New York from granting to another the land under water on the New Jersey shore. Such a grant, if made, must be made by the State that owns the fee.

The right to a jurisdiction over the wharves, &c., naturally follows from the other, and is the reservation of the title and control of the land after it is made out of

the water, on the shore of the State. The right to the 24
regulation of the fishery is immaterial to the question before us.

These are all the powers reserved to New Jersey.

I cannot doubt but that this grant of exclusive jurisdiction to the State of New York, with the above exceptions, confers upon the State full power and authority to preserve the river and bay from injury by strangers having no authority so to act.

The people of the State of New York have the sole right to exercise authority and control over the waters 25
and the land covered by water against all persons who have no right to take possession. That they may have such an interest in the waters alone as would enable them to maintain an action against persons who, without right, thus seek to interfere with that control or jurisdiction, I have no doubt.

It is not an uncommon thing for persons owning the bed of a river to convey to others a right to the water, and such a right may be protected and preserved by action, even against the grantee.

In *People* vs. *Canal Appraisers*, 33 N. Y., 461, Ch. 26
J. DAVIES discusses at great length, and with great ability, the rights of the State to navigable waters, and although not deciding any of the questions raised in this case, yet he shows there that both in the water and in the land under the water the sovereign power possesses rights and estates which may be preserved and protected.

If this were an action against the State of New Jersey, 27
very different questions would arise. It was in this view that the learned Justice tried the case at the Special Term, and his decision is based more upon the rights of New Jersey to build wharves and piers on her shores, than upon the real merits of the case, as presented on this demurrer.

I am free to admit that the Article, which gives to New Jersey the exclusive jurisdiction over wharves, docks and improvements made, and to be made, upon

the shore of that State, would, if New Jersey were the defendant, raise a question of much importance and difficulty; that such a clause might be construed as giving to New Jersey the right to build piers and wharves below low water is apparent, for the State of New York never claimed to own above low water mark, and her rights were only recognized to that extent in this treaty, and the term shore, must have a more extended construction than between high and low water mark, because the same word is afterwards used, as places where vessels might get aground while navigating the river.

But that case is not before us on this demurrer.

By the demurrer the defendants admit that the plaintiffs have the sole and exclusive jurisdiction over the bay and water of the Hudson River, and of the land covered with water to low water mark on the New Jersey shore, as stated in the agreement between the States of New York and New Jersey; that these waters are arms of the sea, in which individuals can have no right or title; that the defendants have taken possession of a tract of land under water in said bay and river, and displaced the water by filling in the same to the extent of eight hundred acres in a portion of the said bay and river, over which the plaintiffs have exclusive jurisdiction; that the defendants are engaged in filling in to a larger extent, and will cause serious damage to the harbor of New York, and that said defendants are so doing, without any right and without any grant or permission of the plaintiffs.

By these admissions the defendants appear as simple wrong doers and trespassers committing a serious injury to the rights and property of the plaintiffs, which they seek to restrain.

I see no good reason why, under such a state of facts, the defendants should not be restrained from doing further wrong and damage, until it appear that they have some better right and authority than their mere will and pleasure.

To sustain this judgment would be an invitation to

any body at their pleasure to sink blocks and piers in this portion of the river regardless of the rights of New York. 32

Nor can it be said that it does not appear that this filling is not between high and low water mark, and therefore not within the jurisdiction of the plaintiffs; because it is averred that this filled-in ground has been connected with the main shore of New Jersey by a wooden trestle work about one mile in length.

Even if it be conceded that after this land is made by the filling in, it becomes subject to the jurisdiction of New Jersey, still that does not relieve the defendants, because it is averred that they are engaged in the work and intend to extend their filling to a much larger extent; and as to that I have no doubt of the plaintiff's right to interfere, until the defendants show some better proof than now appears in these papers. 33

I forbear to express any opinion upon the right claimed by New Jersey to build piers and wharves, and make improvements on her shore. 34

When the defendants, by an answer, claim that they have the authority of the State of New Jersey for their acts, that question will properly arise. It cannot be available on this demurrer.

Something was said about the extent of the County of New York in connection with this action. The boundaries of the State extend to low water mark on the New Jersey shore.

1 R. S., p. 54. 35

That statute has not been altered.

The County of New York on its western boundary extends to the west bounds of the State.

1 R. S., 5th Ed., p. 3.

This description covers the disputed territory so far as the boundaries are designated by any law of the State, so that the action is properly brought in this District.

36 The conclusion to which I have arrived is, that the demurrer is not well taken, that the State of New York has such a right, title and interest in the waters of the bay and Hudson River as will enable them to maintain this action.

And that the defendants are mere trespassers, and show no defense thereto.

The judgment should be reversed, and judgment ordered for the plaintiffs on the demurrer, with leave to the defendants to answer on payment of costs.

SUTHERLAND, J.—"I dissent."

J. SUTHERLAND.

SUPREME COURT, 145

SPECIAL TERM.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

146

SUTHERLAND—J.

On the trial of this action certain evidence (Laws of New Jersey and Documentary Evidence) was given on the part of the defendant, showing, or for the purpose of showing, that its acts and alleged encroachments on the rights and jurisdiction of the plaintiffs, mentioned and complained of in the complaint, were done, and are maintained, by or under the authority or license of the State of New Jersey.

147 The question of Jurisdiction and of right, in view of or with reference to this evidence, or such evidence, it seems were not passed upon by the General Term, on the appeal from the judgment at the Special Term for the defendant on the demurrer; yet, after carefully considering the opinion of Mr. Justice Ingraham, I think it justifies, if it does not require of me, a judgment *pro forma* for the plaintiffs, under the pleadings and *proofs*, especially in view of the certainty that all questions under the pleadings and proofs of the case will be 148 passed by the General Term and by the Court of Appeals.

There must therefore be judgment for the plaintiff, with costs.

The findings of facts, &c., to be drawn by the counsel for the plaintiffs and settled on notice.

(A Copy.)

CHARLES E. LOEW,
Clerk.

149 NEW YORK SUPREME COURT,

GENERAL TERM.

THE PEOPLE OF THE STATE OF NEW YORK

against

150 THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

CLERKE, P. J.: The decision of the General Term on demurrer to the complaint substantially decides the question which arose on the issues elicited from the pleadings after the service of the defendants' answer.

The only matter introduced at the trial of the issues, which was not presented on the demurrer, is that
151 arising on the evidence given by the defendants for the purpose of showing that their alleged encroachments, set forth in the complaint, were done with the authority and under the license of the State of New Jersey.

But this could not possibly affect the main question, whether under the treaty of 1833, that State surrendered exclusive jurisdiction to the State of New York over all the waters of the bay and river, and over the lands covered by said waters to the low water mark on the
152 New Jersey side.

This Court, at General Term, decided this question in the affirmative; it is, therefore, *res adjudicata*.

No license or authority from any source can defeat or abridge the exclusive political jurisdiction of New York.

The judgment should be affirmed, with costs.

W. S. YARD,
Temporary Reporter.

I concur in saying that the decision of the General 153
Term of the demurrer may be considered as *res adjudicata* as to the main question, and therefore concur in the above conclusion, but it will be noted that I did not concur in, but dissented from that decision.

J. SUTHERLAND.

154 COURT OF APPEALS.

THE PEOPLE OF THE STATE OF NEW YORK, Respondents,

v.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Appellants.

155

(*Argued March* 25, 1870; *decided June* 22, 1870.)

Appeal from a judgment entered upon the decision of the General Term of the Supreme Court, in the first judicial district, affirming a judgment rendered in favor of the plaintiff, on trial before Mr. Justice Sutherland.

This is an action commenced by the attorney-general in behalf of this State to abate as nuisances, and cause
156 the removal of certain wharves, bulkheads, piers, and railroad tracks, and other erections, placed by the defendants in the harbor of New York, and extending into said harbor and the Hudson river, about a mile from the New Jersey shore. It is claimed in the complaint that said erections are within the limits and jurisdiction of this State; and that the same are an obstruction to navigation, and are injurious to public health, and were constructed without any lawful authority. The com
plaint sets up, as the basis of the plaintiff's claim to juris-
157 diction over the waters of the bay and river, a treaty or agreement made between the two States, in 1833, wherein and whereby the jurisdiction claimed was conceded and yielded to this State. The complaint prays judgment for the abatement of such erections as a nuisance, and that the defendants be perpetually restrained by injunction from using and occupying said docks, wharves, and other erections; and also from filling in with earth, stones, rubbish, timber or other material, any part or portion

of the waters of the said bay and of the Hudson river 158
west of Manhattan Island, and for other relief. The
defendants, declaring and insisting that the court had
no jurisdiction of the persons of the defendant, or of the
subject-matter of the action or pretended cause of action,
set forth in the said complaint, and the same did not
state facts sufficient to constitute a cause of action
answer, setting up that they were a corporation duly in-
corporated by the State Legislature of New Jersey, and
had under the authority of such State acquired the
right to make, fill in, construct, and use, the said rail- 159
road and docks, wharves, piers and improvements, men-
tioned in the complaint; and that all the lands occupied
and used by them for the erection of said docks, wharves,
and improvements were within the limits of the said
State of New Jersey, and on the shore of said river and
bay within her boundary; and that the waters upon so
much of the lands of said bay as is occupied by said
docks and wharves was necessarily displaced for the
purpose of such erections, and no more than was neces-
sary for that purpose was so occupied. And they deny 160
that said docks and wharves and erections do interfere
with or obstruct the navigation of said river or bay, but
insist, on the contrary, that the same will benefit such
navigation and furnish increased facilities for such navi-
gation; and deny that the said wharves and piers and
erections are in any respect public nuisances, and deny
that the same are within the jurisdiction of this State;
and insist that the plaintiffs have not correctly stated said
treaty or agreement so made between said States, and
set out the same in full. 161

The cause was tried at a Special Term of the Supreme Court, held in and for the City of New York, by the Hon. Josiah Sutherland, one of the Justices of said Court, who made and found, among other things, the following findings:

He found that on the 16th of September, 1833, an agreement was entered into between Commissioners of the State of New York and Commissioners for the State

of New Jersey, in the language and terms set forth in the defendant's answer; and also that the same is also contained in volume 1st of the Revised Statutes of the State (5th ed., page 80), which agreement was duly ratified by Congress and by the said States, and is now in full force and effect.

That the defendant, without any authority from the plaintiff, had taken possession of and appropriated to its own exclusive use a large extent of land located in the Hudson river, west of the middle of the waters of the Bay of New York and the Hudson river, and west of Manhattan Island, and south of Spuyten Duyvil creek, and had filled in and displaced the water and constructed and erected a bulkhead, extending east and west 2,400 feet at the south side, and 1,000 feet from north to south, with piers extending from said bulkhead easterly into the river over 400 feet in length, and used the same as and for docks and wharves.

That said bulkhead, piers, and docks, and wharves are a little southerly of Jersey City wharf line, and are connected with the shore by a railroad, constructed by the defendants, of trestle work filled in with dirt; and the distance from the east end of the bulkhead to the said shore is one mile and 105 feet, and that such railroad runs across that part of the bay south of Jersey City. That when said work was commenced, in 1863, the depth of water at mean low water from the shore out to the bulkhead was from one foot and nine-tenths, which was the depth at the shore, to four feet and one-tenth; the middle of the way out it was four and one-tenth feet, and grew a little deeper as it went out; that the depth of water at mean low water along the bulkhead at the south line is now four and a half feet to twelve and four-tenths feet at the point where the piers begin; that the depth along the south pier is from twelve and four-tenths feet at the bulkhead to nineteen and nine-tenths feet at the easterly end; and of the north pier, from three and nine-tenths feet to nineteen and four-tenths feet at the easterly end. That such erections or obstructions are

injurious to the navigation of the waters of the bay, by displacing so much of the waters out of the bay and river as they occupy, and that vessels ranging from twenty to thirty tons could navigate the bay where the water is three or four feet deep at low tide. 166

That such erections are encroachments upon and into the river and harbor, and are injurious to the interests of navigation and to the harbor of New York.

That the material used for filling up and making said railroad, wharves, etc., has been principally street dirt, including much animal and vegetable matter, which undergoes fermentation and gives out unwholesome and offensive odors to such an extent as to be injurious to health. 167

That the defendants are a railroad corporation, duly organized under the laws of New Jersey, under which they have acquired title to the lands upon which said erections are made, and that the same are made by the defendants under the sanction and authority of the State of New Jersey.

That such erections have been placed upon lands purchased by the defendants of the raparian owner upon the said bay, and that the said defendants have constructed the eastern terminus of their railroad and ferry houses and slips for the purpose of carrying passengers and freight to and from their railroad to the City of New York; that said ferry houses, piers and wharfs are at the easterly end of said lands so occupied by the defendants, and the same are to the east of the exterior lines of the wharves in Jersey City, and west of the centre of the Hudson river and of New York bay. 168

That in order to erect said structure said defendants have displaced so much of the waters of said bay as are necessary for that purpose and no more; and that said docks and piers, wharves and bulkheads are not extended further into said river than would be required for the use of a permanent ferry, such as is now used and conducted by the said defendants. 169

And the learned judge found as conclusions of law:

That the State of New Jersey had no right or authority to authorize any person or persons to construct or erect any docks, wharves, piers, or improvements beyond low water mark on the New Jersey side of said river and bay, south of Spuyten Duyvil creek, and west of Manhattan Island; and also, that the defendants had no right to make said erections when they were located within the navigable waters of the bay and river; that they are within the jurisdiction of the State of New York, and are infringements upon the rights of said State. That such erections are a common and public nuisance, and that it is the right and duty of the State of New York in protecting the interests of the people, and the commerce and navigation of the bay and river, to interpose and have the same abated by judicial proceedings. That for the reasons above stated, and as the materials used in filling up and making such erections are injurious to the public health, and in conflict with necessary sanitary regulations, the plaintiff is entitled to a perpetual injunction, as prayed for in the complaint. And gave judgment accordingly, and for costs in the action.

From this judgment the defendants appealed to the General Term, in the first judicial district, where the same was affirmed, and from this judgment the defendants have appealed to this Court.

Frederick T. Frelinghuysen (John C. Dimmick with him), for appellants.

Marshall B. Champlain, Attorney-General, and Amasa A. Parker, for respondent.

E. Darwin Smith, J.: The protest with which the defendants commence their answer, wherein they declare and insist that this Court had no jurisdiction over the persons of the defendants, or over the subject of the action, or pretended cause of action, set forth in the complaint, and that the said complaint does not state facts sufficient to constitute a cause of action, presents the leading and controlling point upon which this action depends.

The voluntary appearance of the defendants in the 174
action gave the Supreme Court jurisdiction of their persons. Their submission to answer after their demurrer presenting the question of jurisdiction had been overruled, did not waive their right to raise the question afterward, that the Court had no jurisdiction of the subject-matter of the action, and that the complaint did not state facts sufficient to constitute a cause of action (Code, section 148). The cause of action set forth in the complaint is clearly one of equitable cognizance; and as the jurisdiction of the Supreme Court is co- 175
extensive with the boundaries of the State, it clearly had jurisdiction of such cause of action, if the place where the nuisances complained of were erected and existed was within the territorial limits of the State.

It is quite clear that upon no other ground have the Courts of this State any power, either in equity or by indictment and criminal proceedings, to abate a nuisance. The *locus in quo* must be within the legal limits of some county of the State, and the process for the abatement of such nuisance must go to the proper sheriff for exe- 176
cution, within the limits of his county.

The claim of jurisdiction over the *locus in quo*, and over the subject-matter of the cause of action, as stated in the compiaint, and asserted in the judgment at Special Term, and in the opinion at General Term, is confessedly based upon the agreement or treaty made between the States of New York and New Jersey in 1833.

Judge Ingraham, in the opinion at General Term, given upon the decision of the demurrer, when this 177
question was distinctly presented to the Court, said: "That the right" to maintain the action, "if it existed, is to be found in that agreement or treaty." The construction of this agreement therefore presents, for the consideration of this Court, the principles upon which this action turns, and which involves the decision of the cause.

As in the construction of all acts of the Legislature

178 it is a cardinal rule to consider the cause or object of making it and the mischief sought to be removed or remedied, so it will be expedient, I think, before proceeding to a discussion of this agreement or treaty, to consider the occasion which led to it and the circumstances attending its execution and adoption by the State.

Before the making of this treaty or convention this State claimed that its territorial limits, opposite the City of New York, extended to low water mark on the west shore or side of the Hudson river. In the first title of
179 the first chapter of the Revised Statutes entitled, "Of the boundaries of the State," the description in tracing the line of the State easterly from the Delaware river, it proceeds in the line of the forty-first degree of north latitude, till it reaches a "*a rock on the west side of the Hudson river;* thence it runs southerly along the west shore at low water mark, of the Hudson river, of the Kill Von Kull, of the Sound, between Staten Island and New Jersey, and of Raritan bay to Sandy Hook," and including all the islands in the bay of New York.

180 The Montgomery charter of the City of New York, granted in 1730, also, in bounding that City, runs the south line from "Red Hook, on the Long Island shore, across the North river, so as to include Nutters' Island, Bedloe's Island, Rucking Island, and the Oyster Islands, *to low water mark on the west side of the North river*, or so far as the limits of the province extend, then so to run up along the west side of the said river, at low water mark, until it comes directly opposite to Spuyten Duyvil creek." New Jersey, it clearly appears, did not assent to or acquiesce in this claim.

181 From a message of the Governor of this State to the Legislature, dated March 11, 1831 (*vide* Senate Documents of 1831, No. 55), and accompanying papers, it appeared that the State of New Jersey, in June, 1829, had commenced a suit in the Supreme Court of the United States against this State, claiming that "the said State of New Jersey was justly entitled to the exclusive jurisdiction and property of and over the waters of

Hudson river, from the forty-first degree of north lati- 182
tude, to the bay of New York to the *filum aquæ* or mid-
way of the said river, and to the midway or channel of
said bay of New York, and the whole of Staten Island
sound, together with the land covered by the water of
the said river, bay, and sound in the like extent.

It appears from said message that New Jersey had
also, in 1827, applied through Commissioners to have
the controversey in respect to the boundary submitted
to the said Supreme Court, as an impartial tribunal, to
arbitrate between the parties, which had been declined 183
by this State; but finally in 1832 the Legislature passed an
act (*vide* Sess. Laws, chap. 6, p. 6), authorizing the Gover-
nor to appoint three Commissioners on the part of this
State to meet Commissioners appointed or who might
be appointed by the State of New Jersey, "to negotiate
and agree respecting the territorial limits and juris-
diction of the State of New York and the State of New
Jersey."

The act further provided that the agreement duly 184
made and signed by the Commissioners should be bind-
ing on the State when confirmed by the respective Leg-
islatures and approved by Congress. The Legislature
of New Jersey passed a similar act, and the Commis-
sioners of the two States duly met and made and signed
the agreement referred to, which was afterward ratified
by the Legislature of this State and New Jersey and
approved by Congress, the first article of which is as
follows:

185

"ARTICLE 1.—The boundary line between the two
States of New York and New Jersey, from a point
in the middle of Hudson river, opposite the point
on the west shore thereof, in the forty-first degree of
north latitude, as heretofore ascertained and marked,
to the main sea, shall be the middle of the said river, of
the bay of New York, of the waters between Staten
Island and New Jersey, and of Raritan bay to the main
sea, except as hereinafter otherwise particularly men-
tioned."

186 The language of this article is certainly very clear and explicit.

Aside from the *exception* at its close, it leaves no room for constructive doubt or misconstruction in regard to its meaning or effect. It fixes definitely the boundary line between this State and New Jersey at or in the middle of the Hudson river, and of the bay of New York, and of the waters between Staten Island and New Jersey, and of Raritan bay to the main sea. It relinquished, in legal effect, whatever right or claim this
187 State formerly had to the bed of the Hudson river between Manhattan and Staten Islands, and low water mark on the Jersey shore. In this particular it yielded the precise point in controversy with that State; for, as is said by the Attorney-General of this State in a statement of the case, communicated by Governor Throop with his message to the Legislature above referred to, "the principal prayer of the bill," referring to the bill filed by New Jersey in the Supreme Court of the United States, and served upon the Governor and the Attorney-
188 General of this State, "is that the eastern boundary line between your complainants (the State of New Jersey) and the State of New York may, by the order and decree of this Honorable Court, be ascertained and established, and that the right of property, jurisdiction, and sovereignty of your complainants to the *filum aquæ* or middle of said Hudson river, from the forty-first degree of north latitude on the said Hudson river, through the whole line of the eastern shore of the State of New Jersey, as far as said river washes and bounds the said
189 State of New Jersey, down to the bay of New York, and to the channel or midway of said bay, and all the waters lying between the New Jersey shore and Staten Island."

The boundary line, it appears, is thus established between the two States precisely as prayed for by New Jersey, in the said bill of complaint, at and in the middle of the Hudson river and other waters therein mentioned.

This article does not profess to convey, grant, or re-

linquish any rights on the part of either State. It simply declares that the boundary line between the two States at the place, etc., "shall be the middle of the said river," etc. 190

Whatever doubt may have existed before upon the subject, immediately upon the adoption and ratification of this convention or treaty, the sovereignty and jurisdiction of the respective States extended and attached to that portion of the said river and other waters assigned to each State respectively by said articles up to the time of the boundary therein fixed and established. 191

All doubt or conflict in respect to the territorial limits or boundary of the respective States, so far as the same related to or affected the Hudson river and the bay of New York, and other waters therein mentioned, was and is thus removed and extinguished.

This establishment of the boundary line between the two States clearly left and fixed the *locus in quo*, the place where the nuisances complained of in this action, and sought to be abated thereby, are erected and situated within the undoubted territorial limits and boundaries of the State of New Jersey. 192

This view in respect to the *locus in quo* of said nuisances, and of the subject matter of this action, seems necessarily to be conclusive, and require a reversal of the judgment below and a dismissal of the complaint, unless the jurisdiction of the Court can be sustained upon other grounds.

The next inquiry in order, I think, on this question, relates to the exception at the close of the said first article in these words: "Except as herein otherwise particularly mentioned." 193

The next article in said treaty is as follows:

"ARTICLE 2. The State of New York shall retain its present jurisdiction of and over Bedloe's and Ellis Islands, and shall retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that State."

194 This article fulfills the office of an *exception*, as it takes out something embraced in the general description, and which would otherwise be granted, and explains and gives point and force to this exception in article first. These islands are situate west of the boundary line fixed by the first article of the said convention, and would have passed to New Jersey without this exception. The first article simply fixes the boundary line between the States, and this exception takes from the territory thus assigned to New Jersey these islands,
195 and limits and restricts the boundary line so far as the same would otherwise give them to New Jersey.

This second article, therefore, ratifies this exception in the first article, and gives it full force and effect. The right of absolute sovereignty, which includes all the power of government, all the authority, executive, judicial and legislative, which the several States possess and exercise, subject to the constitutional supremacy of the national government, doubtless belongs to New Jersey, over the domain and territory of said State This
196 right of government control may doubtless be modified by compact between the States. And this brings us to the inquiry, how far, if at all, the State of New Jersey had made a binding provision by treaty for the cession and extinguishment of any of her territorial or governmental rights to the State of New York, over the waters or land referred to in said treaty. When these Commissioners for the two States had thus fixed and established the boundary line between the two States, as fixed and defined in said first and second articles of said
167 treaty, they doubtless clearly saw that their work was unfinished. The act for the appointment of said Commissioners passed by this State, empowered them to negotiate and agree respecting the territorial limits and *jurisdiction* of the State of New York and the State of New Jersey; and the act for the appointment of Commissioners by New Jersey is entitled "An Act for Settlement of the Territorial Limits and *Jurisdiction* between the States of New Jersey and New York," and I presume contains similar powers.

But whatever may have been the powers conferred by 198
these acts on the Commissioners, and it is now a matter of no consequence, since their agreement or treaty had been confirmed by both the State Legislatures and ratified by Congress, the Commissioners doubtless consider that under the authorities to agree, respecting "*the jurisdiction between these States*," they were authorized to agree upon and determine the mode in which the said States should exercise, use and enjoy their respective rights into and upon and over the waters of the said river and bay, through the centre of which they had just, 199
in said first article, run an imaginary line, fixing the boundary between said States, and how the vast domestic and foreign commerce which then covered and was destined in the future to crowd and cover these waters, might be best protected, controlled and governed, without conflict between the authorities of said States, or between the citizens thereof.

It is quite apparent, I think, that they well and wisely considered that the necessities of the case, the welfare of these States, the exigencies of commerce, and the 200
interests of the City and Port of New York in particular, in whose prosperity, as the commercial metropolis of the country, Now Jersey had, in a large degree, a common interest, required that there should be a unity of control over said waters, and a single and exclusive jurisdiction exercised over them by one of the said States. And this control or *jurisdiction*, in the language used in that treaty or agreement, was very properly conceded to this State in the following article:

201

"ARTICLE 3. The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the waters of Hudson river lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvil creek, and of and over the lands covered by the said waters to low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and of jurisdiction of the State of New Jersey."

202 This provision in the treaty most clearly and distinctly gives and grants to and vests in the State of New York, full, complete and undoubted control, government and jurisdiction of and over all the waters therein mentioned. Such was the clear intent and purpose of this provision; and, so far as it was essential to the proper exercise of such jurisdiction, it gives a control also of and over the land covered by such waters. It doubtless was designed in the clause of said provision in these words: "Of and over the lands covered by the said waters to
203 low water mark," to disembarrass the jurisdiction so conferred over the said water from all pretence of right to interfere therewith, arising from the legal maxim, that the owner of the soil owned all above it, "*cujus est solum, ejus est usque ad solum.*" So that the jurisdiction over the *water* should be absolute and unquestioned for all practical purposes.

It clearly could not have been the intention in these words to re-cede to New York what had just been relinquished in respect to the boundary between the two
204 States in the first article, or to nullify the force of such article, for it declares expressly that the rights over the water so granted was subject to the rights of property and of jurisdiction of the State of New Jersey, following:

1st. That the State of New Jersey shall have the exclusive right of property in and to the land under the water lying west of the middle of the bay of New York, and west of the middle of that part of Hudson river
205 which lies between Manhattan Island and New Jersey.

2d. That the State of New Jersey shall have exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New

York, which now exist, or which may hereafter be passed. 206

3d. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters, provided that the navigation be not obstructed or hindered.

These provisions clearly show that it was not the intention of New Jersey, in giving jurisdiction to New York over the *waters* of such State, to relinquish any of the important rights of property which were acquired by or conceded in the first article of the said treaty. 207

The whole object of New Jersey in making the treaty, and the whole point of the controversy between the States, so far as that State is concerned, would be defeated by a construction of the treaty which involved such a consequence.

Under the claim previously made by this State to the title to low water mark on the New Jersey shore, this State, if such claim had been conceded or established, would have had the right to control all erections and improvements on the New Jersey side of the river below low water mark, and would necessarily have had complete governmental authority and jurisdiction to that point. The proprietary rights of New Jersey would have ended at low water mark, and that State would have been practically excluded from the Hudson river and the bay, and debarred all right to erect wharves, piers, or other improvements upon the sea-shore, except by leave and license first obtained from this State. 208 209

It was this very claim, and the legal rights and consequences resulting from it, if allowed, which New Jersey had long resisted. This was, in legal effect, renounced and abandoned by this State in the first article of said treaty; and New Jersey, as a sovereign, independent, coequal State, acquired thereby, if she did not before possess, all the rights of proprietorship in said river and bay west of the centre thereof, possessed by this State east of the same centre line.

210 Certainly this third article could not have been intended, whatever may be its legal effect or construction, to restore to this State rights so long and so earnestly and persistently claimed by New Jersey, and thus so formally renounced by this State in the first article of said treaty. These three subdivisions, or provisions of this third article seem to me to have been entirely unnecessary. The giving of jurisdiction to this State over the waters of said river and bay did not imply jurisdiction over the land covered by such waters, much less of land upon the shore not covered by water; but these
211 provisions were doubtless inserted for greater caution, to exclude all claim or ground for claim to that effect, and to save all misunderstanding in the future on that subject. They show that nothing in the shape of property was granted or yielded to New York, or intended to be in any way parted with or surrendered by New Jersey. The right in respect to the fisheries is expressly excepted and reserved as a State right, which pertained in public waters to the citizens of the State, so far as the same was capable of private use, or of State appro-
212 priation.

The provision that the State of New Jersey shall have exclusive jurisdiction of and over the wharves, docks, and improvements made and to be made on the shore of said State, is an unqualified assertion in the compact, that the right to build, construct and repair and maintain wharves and docks, piers and other erections and improvements on the shore of New Jersey was a right of property retained and reserved as appurtenant to the soil of the State and proprietorship of the bed of the
213 river and bay, and involves and includes a declaration that complete jurisdiction and control over the whole subject of wharves and docks on the shore of said river and bay belong to the said State of New Jersey. The word "shore" is obviously used in this provision in a general sense, as equivalent to side or margin of the river and bay, and not in the strict sense as applicable to the particular space between high and low water

mark, as is its meaning when applied to the land at the 214
edge or border of the sea, or arm of the sea, where the
tide ebbs and flows.

But it is preposterous to suppose that these wharves and docks, referred to in said article, were to be constructed upon the dry land, remote from the water, or above low water mark. As with the wharves then erected and in use contiguous to said waters, so the wharves and docks thereafter to be made and erected were doubtless to be constructed below low water mark, and to extend sufficiently far into the deep water of the 215
river or bay to answer the ordinary purposes for which such erection was made.

The care taken to provide that, under the concessions of jurisdiction over the waters of said river and bay, no right should exist or be exercised upon the *land* or over the soil of New Jersey, upon the shore or over the bed of the river or bay, and to exclude every pretence for any such claim or right, is particularly shown in the provision that New Jersey should have exclusive jurisdiction of and over all vessels aground on the shore of said 216
State, or fastened to any wharf or dock on such shore, except that the said vessels shall be subject to the quarantine or health law and laws in relation to passengers of the State of New York, which now exist, or which may be hereafter passed.

This provision, and particularly the language of the *exception*, seems to me to be the key to this whole compact, so far as it relates to this question of jurisdiction

Confessedly, vessels afloat upon the waters of the bay or the river are, and were intended to be subject to the 217
exclusive jurisdiction of New York; but whenever they were fastened to any wharf or dock upon the New Jersey shore, or were aground upon said shore, they became attached to the soil of New Jersey, and were under her exclusive jurisdiction.

The moment they became thus affixed to the land of New Jersey, in the bed of the river or on the shore, the jurisdiction of New York over them was to cease, except,

in the language of said proviso, "They shall be subject to the quarantine or health laws in relation to passengers of New York."

This exception explains the object and nature of the jurisdiction intended to be given to New York. It was to be a police jurisdiction of and over all vessels, ships, boats, or craft of every kind that did or might float upon the surface of said waters, and over all the elements and agents or instruments of commerce, while the same were afloat in or upon the waters of said bay and river for quarantine and health purposes, and to secure the observance of all the rules and regulations for the protection of passengers and property, and all fit governmental control designed to secure the interests of trade and commerce in said Port of New York, and preserve thereupon the public peace.

By this exception it was designed that vessels afloat upon said bay and river should not escape or evade the quarantine laws and the laws relating to passengers of New York, by coming to anchor on or near the New Jersey shore, or by becoming attached to the wharves or docks on said shore or adjacent thereto, but in all other particulars they were left subject to the laws of New Jersey.

The next article in the agreement, article 4, shows the character of the jurisdiction designed to be given to this State over these waters quite distinctly. It is as follows:

"ARTICLE 4. The State of New York shall have exclusive jurisdiction of and over the waters of the Kill Von Kull, between Staten Island and New Jersey, to the westernmost end of Shooter's Island, in respect to such quarantine laws, and laws relating to passengers, as now exist or may hereafter be passed under the authority of that State, and for executing the same; and the said State shall have exclusive jurisdiction for the like purposes of and over the waters of the Sound from the westernmost end of Shooter's Island to Woodbridge creek,

as to all vessels bound to any port in the said State of New York."

The remaining articles of said agreement, all fairly considered, conduce to the same construction, and confirm the view that the jurisdiction conferred upon this State over the waters of said river and bay was qualified and limited jurisdiction, conferred for police and sanitary purposes, and to promote the interests of commerce in the use and navigation of said waters, and was not designed to confer or create control over the lands or domains of New Jersey, or to give to this State any right to interfere with her complete political or governmental jurisdiction as a sovereign State of and over her own soil, and its appurtenances, and of and over every description of property of any appreciable value within her territorial limits.

The fifth article contains the same provisions, in substance, contained in the third, in respect to all the waters of the Sound between Staten Island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan bay, west of a line drawn from the lighthouse at Princess bay to the mouth of Mattewan creek, and confers exclusive jurisdiction over such waters upon the State of New Jersey, subject to the same rights of property and jurisdiction of New York, over wharves and docks, and the right of regulating the fisheries between the shore of Staten Island and the middle of said waters, as is contained in the said third article in respect to the same subject over the waters therein mentioned.

Articles six and seven of said treaty give to said States equal concurrent jurisdiction over all of said waters for the service of criminal process, issued under the authority of either State against any person accused of any offence committed in such State, or on board of any vessel being under the exclusive jurisdiction of such State, or committed against the regulations made or to be made by either State in relation to the fisheries men-

226 tioned in the fourth and fifth articles of said treaty, and of civil process issued against any person domiciled in either State, or against property taken out of either State to evade its laws; but such process was not to be served upon or on board of any vessel aground upon, or fastened to the shore of either State, or fastened to a wharf adjoining thereto.

These articles, I think, properly interpreted, concur in showing that it was the intention of this treaty that both States should retain the absolute control of and
227 over its own soil, and over everything annexed or attached to it, and over every ship, vessel, or other floating craft attached to any wharf or pier, or located in any dock upon its shore, or aground in the waters adjoining its shore, and of and over all persons living or being upon such wharves or vessels, and the property therein; and that each State intended to throw the shield of its State law and State sovereignty over all such ships, vessels, persons and property.

A crime committed upon any vessel fastened to any
228 wharf on the shore, or upon any vessel aground in the waters adjoining the shore of New Jersey, and west of the said river or bay, except those offences specified in the said third article against the quarantine or health laws, and the laws in relation to passengers of New York, would be, I think, clearly an offence against the peace and dignity of New Jersey, cognizable exclusively in her courts, and as much so as if said offence had been committed inland and within her unquestioned bounds.

And this consideration seems to me conclusively to
229 dispose of this case, so far as the nuisance complained of relates to the public health, and the materials used in filling up and making the erections complained of, for such nuisance is a misdemeanor indictable at common law in the criminal courts of the county where it is located, and it seems to me quite clear that the persons engaged in erecting, or maintaining, or continuing said nuisance thus, if the finding is true, necessarily affecting the public health of the people of New Jersey, and

particularly of the inhabitants of its neighboring city of Jersey City, and of its vicinity, could not be lawfully indicted and convicted in the City and County of New York, for the erection and continuance of such nuisance, or elsewhere than in the proper county where such nuisance existed in the said State of New Jersey. 230

But in the finding of fact of the learned Judge at Special Term, it is found that the erections complained of are an encroachment upon and into the said harbor and river. And, as matter of law, it was also found "that the said erections were a common and public nuisance, and that it is the right and duty of the State of New York, in protecting the interests of the people and the commerce and navigation of the said bay and river, to interpose and have the same abated by judicial proceedings." Upon the facts it is difficult for me to see how erections extending from the land on the shore over flats covered with shallow water, ranging from one and nine-tenths feet to four and one-tenth feet deep, and extending into the river and bay simply far enough to meet navigable waters, and no further than these "would be required," as the fact is found, "for the use of a permanent ferry," such as is now constructed and in use, could be an injury to navigation and commerce upon said waters. To call such erections, made in the manner and for the purpose stated, a nuisance, seems to me an entire misnomer, and that such erections, instead of being a nuisance and injurious to commerce and navigation, are really works and improvements, adapted, as they were obviously designed, to promote and facilitate trade, commerce, and navigation. 231 232 233

I can conceive of no value in the waters of this bay and river to these States as navigable waters, if they are not to be used, and may not be approached on either side by wharves and piers, and other erections, extending from the land sufficiently far into the same to reach the navigable waters thereof, and thus connect and allow intercourse and trade between the land and the vessels upon the water. But assuming, as I suppose

234 we must, that this finding upon the facts is to be unquestioned here, and it is doubtless conclusive upon this Court so far as the Court below has power to adjudicate upon the question, and that such erections are obstructions and injurious to the navigation of the waters of said bay and river, still such finding cannot transfer the *locus in quo* of such nuisance from the State of New Jersey to this State.

The finding can have no further force than as a finding that such erections and extensions from the land on
235 the New Jersey side of the river and bay are nuisances as affecting the general and common use of such river and bay as public navigable waters. Upon this finding the original question recurs, Is such nuisance within the legal and governmental jurisdiction of this State?

It is part of the argument of the learned counsel for the people that the exclusive jurisdiction of New Jersey over wharves, docks, and improvements upon her shore, does not attach till such wharves, docks, and improvements are constructed, and that New York has the ex-
236 clusive right to decide what and when and how such erection shall be made.

This argument I think entirely unsound and untenable, as I have endeavored to show, and that the jurisdiction of New Jersey over wharves, docks, and improvements on her shore extends to and embraces the whole subject of wharves, docks, and improvements, and includes the power to prescribe when and where and how they shall be erected, and to exercise all the control over them that government can possess over the prop-
237 erty of its citizens.

But it is insisted by the counsel for the plaintiff, "that inasmuch as New York has the exclusive political jurisdiction, the exclusive charge and regulation of navigation, and the exclusive right to legislate on that subject, or to act upon it through its public authorities, the exclusive right to decide what is an obstruction belongs to New York."

This is simply an assertion of a claim that, in a con-

troversy virtually between these two sovereign States 238
in regard to their relative rights, the Courts of this State are entitled to decide the question conclusively in our own Courts; that is, one party to a controversy has the jurisdiction and the right judicially to determine the question in dispute. These erections had been made under the authority of the State of New Jersey. That State, through the parties called into Court in this action, denies the jurisdiction of the Courts of this State; denies the fact of the nuisance, and insists that the erections in questions are proper and lawful improvements, 239
erected upon her own shore and land to enable her citizens to participate in the commerce of the world in the common use of the navigable waters between the States.

The argument to sustain the jurisdiction of our Courts upon the basis urged by the plaintiff's counsel, it seems to me, is entirely untenable and in conflict with the fundamental principle of law and justice, that no party shall be judge in his own cause. If these erections are really a public nuisance, affecting the navigation and 240
use of these great public waters between the two States, situate and erected as they clearly are within the territorial limits of the State of New Jersey, it ought certainly to be presumed, until the contrary appeared, that that State would protect its own interests and the interests of the country and of the commercial world in such waters by abating such nuisance in due time, through its own judicial tribunals.

But if it appears, by any judicial act or decision, that 241
such nuisance was maintained by the authorities of that State, and that the Courts of that State had failed to do their duty in abating them upon the proper proceedings for that purpose, certainly such facts would not constitute a basis or ground upon which the Courts of this State could assert and maintain its jurisdiction for the abatement of such nuisances.

The jurisdiction asserted for this State really belongs to the general government. In the case of the State of

242 Pennsylvania *vs.* The Wheeling Bridge Company and others (13 How. U. S., 579), Chief Justice Taney said: "The Ohio being a public navigable stream, Congress has undoubtedly the power to regulate commerce upon it. They have the right to prohibit obstructions to its navigation; to declare any such obstruction a public nuisance, and to direct the mode of proceeding in the Courts of the United States to remove it, and to punish any one who may erect or maintain it"; and this case and the case of the State of New Jersey *vs.* This State
243 (5 Peters, 284) show, that in the absence of such legislation by Congress, that the proper Court of the United States has original jurisdiction in equity over controversies between States, and over nuisances affecting public navigable waters within the limits of the Union. But this is another, and it seems to me an unanswerable argument against the claim of jurisdiction over these erections asserted in the judgment and decisions rendered at the Special Term (and which it is due to the learned Judge who tried the cause, to say, was rendered
244 in obedience to the decision of the General Term, from which he dissented), that the Court has no power to enforce such jurisdiction or carry such judgment into effect. The judgment directs, orders, and adjudges that the said defendants do remove the said erections, bulkhead, piers, wharves, and railroads, and earth, stone, dirt, animal and vegetable matter, and other materials of which they are composed, and restore the said river and bay to the condition in which it was before said erections were made, within one year after service on
245 the defendants' attorney of a copy of the said judgment; and in case the said defendant shall fail to make such removal as aforesaid, the Sheriff of the City and County of New York is thereby directed to remove the same, and to abate said nuisance.

The defendants are a corporation organized under the law of New Jersey, and must be deemed non-residents of this State. This judgment, therefore, cannot be enforced by process of attachment and proceedings as for

a contempt, as against citizens of this State. Such an 246
attempt and proceeding would obviously prove utterly abortive. But the mode of enforcing this judgment in default of the defendants to remove said erections is prescribed in the judgment itself. It directs the Sheriff of the City and County to remove the same and abate said nuisance.

Can the Supreme Court protect its officer and punish all persons resisting him in the execution of this judgment? Most clearly I think it cannot.

A judgment that imposes such duties, and subjects a 247
public officer to the perils incident to and which will obviously attend the attempt to enforce it, cannot be a lawful and valid judgment; must be utterly void for want of jurisdiction in the Court to render the same.

The judgment below should, therefore, be reversed; and, as it clearly appears that a new trial could not change the essential facts of the case, the complaint should be dismissed with costs.

EARL, C. J. (dissenting.)—Prior to 1833 there had 248
been, for many years, a dispute between the States of New York and New Jersey as to the boundary line between the two States. The State of New York had always claimed the boundary line to be at low water mark on the westerly side of the water, between the two States, and New Jersey had disputed this boundary, claiming that the centre line of those waters was the general boundary. The claim of the State of New York was not so emphatically asserted prior to 1830 as in that year. In the Montgomery charter of the City of 249
New York, granted in 1730, the city was bounded, beginning at the mouth of Spuyten Duyvil creek, on the Westchester side thereof, at low water mark, and running on the Westchester side, at low water mark, to the East river, and so on around the easterly side of the city to the southerly end thereof; and "from thence across the North river so as to include Nutters' Island, Bedloe's Island, Bucking Island, and Oys er Island, to low-

250 water mark on the west side of the North river, *or so far as the limits of the province extends*, and so to run up along the west side of the river, at low water mark, *or along the limits of the province*, until it comes opposite to the creek aforesaid, and thence to the place of beginning." In the act passed April 3, 1801, entitled "An act to divide this State into Counties," the westerly boundary of the County of New York is described in the same language as contained in the Montgomery charter; and the County of Westchester is bounded
251 "westerly by a line running from thence down the middle of Hudson river until it comes opposite to the bounds of the State of New Jersey on said river; thence west to the same (west *from the middle of the river*); thence southerly along the east boundary line between this State and the State of New Jersey, to the line of the County of New York," etc. In the act passed March 26, 1813, the boundaries of the Counties of New York and Westchester are described in substantially the same way.

252 It will thus be seen that while the State of New York apparently asserted her claim to a boundary line at low water mark on the west side of the Hudson river, yet she did it in such terms as to show that the boundary was in some dispute and uncertainty. Chancellor Kent, in his work on the charter of the City of New York, page 122, says: "Every revision of our statute laws contained this same boundary line, as the limit and jurisdiction of the city, and with the same reservation as to the west bounds on the Hudson river, and
253 leaving the west bounds of the State along the city line in uncertainty." But in 1830, at the adoption of the Revised Statutes (1 R. S., 61), the claim of New York was unequivocally asserted to low water mark on the New Jersey side of the waters dividing the two States. The reasons for making this claim at that time are fully stated by the revisors in their first note. This assertion of title on the part of the State of New York, thus emphatically made, attracted the attention and aroused

the opposition of New Jersey, and led to the appoint- 254
ment of the commissioners by the two States in 1833, who made the agreement as to the boundary and jurisdiction of the two States, the construction of which is involved in this action. At the time this agreement was made New York was a large and flourishing commercial city, with the finest port, and destined to be one of the largest commercial emporiums in the world, while New Jersey had no commerce, no commercial port, and no brilliant commercial prospects. The commissioners met to settle a boundary that had been in dispute for 255
150 years, and the agreement which they concluded giving neither party all it claimed, was the result of a compromise. In adjusting this compromise, in their efforts on both sides to secure rights which they deemed important, the learned and able commissioners, either from the force of circumstances or because we cannot see all the facts which they contemplated, used language which leaves their intention in some respects somewhat in doubt. In construing this agreement, we must arrive at their intention by considering the circumstances by 256
which they were surrounded, the objects which they had in view, so far as we can discern them, and the meaning of the language which they have used.

Article 1 reads as follows: "The boundary line between the two States of New York and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the water between 257
Staten Island and New Jersey, and of Raritan bay to the main sea, *except as hereinafter otherwise particularly mentioned.*"

It is important to inquire what comes within this exception, and thus controls the boundary as otherwise established in the first article. On the part of the defendant it is claimed that this exception has reference only to, and that the inquiry is fully answered by the

second article. It seems clear to me that this is not the true construction. If that was all that was intended to be excepted it could and most likely would have been inserted in the first article, thus making that article complete as to the boundary between the two States. It could have been added, instead of the exception now contained, as follows: "Except the State of New York shall retain its present jurisdiction of and over Bedloe's and Ellis Islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that State." If the exception was intended to apply only to these islands, it would have been more orderly and precise to have inserted it thus in the first article than to have used a second article, without any apparent reason, to contain the exception, necessarily leaving it in great doubt, to say the least, whether any more exceptions were meant or not. The plain, obvious, and natural meaning of the words "except as hereinafter otherwise particularly mentioned," requires us to hold that they have reference to anything and everything thereafter particularly mentioned in the agreement, in any way modifying the boundary as established in that article. The third article of the agreement, then, also modifies the boundary line as mentioned in the first article, by providing that the State of New York "shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York; and of and over all the waters of Hudson river lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvil creek; and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof." If there was no more than this, and the agreement stopped here, there could be no question, it seems to me, that the boundary line between the two States would be at low water mark on the New Jersey side of the bay and of the Hudson river south of the mouth of Spuyten Duyvil creek; and the boundary as contained in the first

article would be thus far modified, leaving it in full 262
force as to all other parts of it south of the mouth of Spuyten Duyvil creek and as to all the line north of that, for several miles to the westerly end thereof, in the forty-first degree of north latitude. The jurisdiction is "exclusive," thus forbidding the exercise of any jurisdiction within the prescribed limits by the State of New Jersey. It is claimed on the part of the defendant that the word "jurisdiction" is here used in a limited sense. I cannot doubt that it was used in the sense of sovereign governmental jurisdiction. When 263
used in reference to the jurisdiction of a State or government, it means "the power of governing or legislating;" "the power or right of exercising authority." When used in reference to Courts, it means "the power of executing the laws and distributing justice." (See Webster's Dic.) It is used in the former sense in section 1 of the Fourteenth Amendment of the National Constitution: "All persons born or naturalized in the United States, and subject to the *jurisdiction* thereof," etc. It was used in the same sense in the following acts 264
of the Legislature of this State, passed at an early day: "An Act to cede jurisdiction of certain lands on Montauk Point to the United States of America for the purpose therein mentioned," passed in 1792; "An Act to prevent intrusion on lands within the jurisdiction of this State under pretence of title from the State of Connecticut," passed in 1796; "An Act to cede the jurisdiction of certain lands in this State to the United States," passed in 1798: "An Act to preserve and support the
jurisdiction of this State," also passed in 1798; "An 265
Act to cede to the United States the jurisdiction of certain islands situate in and about the harbor of New York," passed in 1800, embracing Bedloe's Island, Oyster Island, and Governor's Island. By an act passed April 1, 1800, certain lands on Staten Island were granted to the United States; but it was provided "that such grant shall expressly reserve the jurisdiction of this State." These illustrations of the use of

266 this word are taken from a single volume of the statutes no before me, and are sufficient for my purpose. This word is used in the same sense every time it is used in this agreement. New York had always exercised exclusive sovereign governmental jurisdiction over the Islands in the waters between the two States, and this jurisdiction is not *conferred* upon her, but is *retained* by her in the second article. It is used in the same sense in the act of Congress passed June 25, 1834, consenting to the agreement, wherein it is provided that nothing
267 in that act shall impair the *jurisdiction* of the United States over the islands belonging to it, and over the waters forming the subject of the agreement.

It is quite clear, then, that if there was nothing more of the third article than I have quoted, it could not be seriously questioned that the sovereign, political, and governmental jurisdiction of the State of New York extended to low water mark on the New Jersey shore westerly of the waters mentioned, and that the boundary named in the first article was so far modified. But it
268 is provided that this exclusive jurisdiction shall be subject to certain rights of property and jurisdiction of the State of New Jersey. It is first provided that "the State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan Island and New Jersey." Why was this provision necessary, if the boundary line remained in the middle of the bay and river, and was not moved west
269 of the middle to low water mark by the exclusive jurisdiction previously conferred in the same article? By this provision, simply, *property* is given to New Jersey, and the governmental jurisdiction and authority of New York is is not interferred with. New Jersey owns the fee of this land in no other sense than if the land was situated in the centre of this State. She owns it as a proprietor, in the same sense in which the United States owns the lands on Staten Island, by virtue of the

act above quoted, passed April 1, 1800, the governmental jurisdiction remaining in the State of New York. This provision, then, does not affect the boundary between the two States, but simply gives New Jersey certain rights of property within the State of New York. 270

It is next provided that "the State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks, and improvements made and to be made on the shore of the said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York, which now exists or which may hereafter be passed." This was a jurisdiction to be carved out of the exclusive jurisdiction previously given to the State of New York; and except as modified by this, the exclusive jurisdiction of the State of New York was to remain. The important question in this case is to determine how far the exclusive jurisdiction of the State of New York is modified by this clause in the agreement. In discussing this question, I shall assume that the word "shore," as here used, does not mean the space between high and low water mark, but that it means, as claimed on the part of the defendant, the space between low water mark and a line far enough out into the water for all the purposes of docks, piers, and wharves. At the date of this agreement certain docks and wharves had already been made on the New Jersey side, and it was foreseen that others might thereafter be needed and be made. New Jersey had but little commerce and no important city or seaport upon these waters. New York City then controlled by far the largest share of the commerce of this country, and these waters were mainly important as her seaport. It was important that this port should be subject to but one State jurisdiction, and that its jurisdiction should be of the State possessing the City of New York, and having by far the largest interest in 271 272 273

274 regulating, protecting, and governing the part. It was clearly the intention of the commissioners, as gathered from the whole agreement, to place that port under the exclusive jurisdiction of the State of New York, so that she could control and regulate it in the interest of her great commerce and her great commercial city. While it was agreed that New Jersey might regulate the fisheries west of the middle of the said waters, yet she was bound to do it in such way as not to hinder or obstruct navigation. So jealous was
275 New York as to encroachments upon her harbors that she would not even intrust the State of New Jersey with this right to regulate fisheries, except with a provision that navigation should not be obstructed or hindered. To uphold the claim put forth by the defendant, while New York was thus jealous of her port, it must be held that she yielded to New Jersey the unlimited and absolute right to make wharves, docks, and other improvements below low water mark on her shore, without any proviso or limitation. As the wharves and
276 other improvements would necessarily be connected with the main land, it was appropriate that New Jersey should have absolute jurisdiction over them when made, and not at all important that New York should have for the interest of her commerce, for the government of her great city, or for any of the purposes of her great port. But when it is proposed to encroach upon the waters with new wharves and improvements, then it was important for New York to intervene and be consulted. Hence the jurisdiction of New Jersey was confined to
277 the docks, wharves, and improvements then made, and such as thereafter might be made; and no right or authority was conferred upon her to make any, or authorize any to be made. Whenever it is attempted to make any new ones, the jurisdiction of New York is involved, and before they can be legally made, her consent must be obtained. The result is that no wharves can be legally and rightfully made on the New Jersey side, below low water mark, without the authority of New

Jersey as the proprietor of the land, and without the 278
consent of New York, which has jurisdiction over both the land and water. This result is reached by giving the natural and plain meaning to the language used, and keeping in view the primary object sought in this part of the agreement, to place the port of New York under the control of New York. The boundary line named in the first article is modified in the same way by the fifth article, as to the waters therein mentioned, and for substantially the same reason. Those waters did not form a portion of the port of New York, and properly be- 279
longed to the port of Perth Amboy, which we are told by the learned counsel for the defendant the people of New Jersey hoped might some day become a great commercial metropolis. Hence these waters were placed under the exclusive jurisdiction of New Jersey, that she might have the exclusive control of that port.

The construction which I have thus given to this agreement gives full force and effect to all parts of it and harmonizes all its provisions. But if we should so far do violence to language as to hold that "the exclu- 280
sive jurisdiction" given to the State of New York was, after all, as claimed on the part of the defendant, merely a "police" jurisdiction, what would be meant by that? Certainly not merely the right to serve process and make arrests, because that is provided for in the seventh article. *Police* means "the government of a city or town," "the administration of the law and regulations of a city," "the internal regulations and government of a kingdom or State." (See Webster's Dic., Jacob's Law Dic., Tomlin's Law Dic.) And a police 281
jurisdiction would mean the right to regulate and govern a City or State. Hence, if it be held here that New York has, by virtue of the third article in this agreement, only a police jurisdiction, it certainly would be broad enough to abate within that jurisdiction what the Court at Special Term has found to be a public nuisance. To abate nuisances is one of the ordinary incidents of police jurisdiction. Hence, it would not help

282 the defendant thus to qualify the exclusive jurisdiction given to the State of New York.

This construction will lead to no absurdities or difficulties. The jurisdiction of each State is clearly defined and limited, except as to the right on the part of New Jersey to serve process, to regulate the fisheries, and to own the land under water, and except her jurisdiction over the wharves, docks, and improvements upon her shore, the jurisdiction of New York is exclusive. New Jersey has no right to make the wharves, docks, and
283 improvements without the consent of New York; but when they have been made by her consent, then the exclusive jurisdiction of New Jersey attaches. She cannot add to her jurisdiction and take away from the jurisdiction of New York by structures wrongfully made. If the low water mark, as it existed in 1833, is thrown forward by gradual accretion, the land thus reclaimed from the water will fall under the jurisdiction of New Jersey, and the jurisdiction of New York will recede with the low water mark. (Kent's Com., 428; At-
284 torney-General *vs.* Chambers, 5 Jurist., N. S., 745; Deerfield *vs.* Arms, 17 Pick., 41; Adams *vs.* Frothingham, 3 Mass., 352.) I conclude, therefore, that the structures and operations complained of in the complaint were within the State of New York, and hence within the judicial jurisdiction of the Court in which the action was commenced and tried. Having reached this conclusion, it is unnecessary to cite authorities to show that, upon the facts proved, the equitable jurisdiction of the Supreme Court was properly invoked and
285 the judgment pronounced was fully authorized. The judgment should, therefore, be affirmed, with costs.

Grover, J., held with Earl, C. J., that this State has a general jurisdiction, but though the treaty of 1833 gave to New Jersey jurisdiction of wharves, etc., made and to be made, and power to decide where and how they shall be made, and was, therefore, for reversal.

All concur for reversal except Earl, C. J., who was for affirmance, and Sutherland, J., who, having been of the Court, below, did not vote. 286

Judgment reversed and complaint dismissed with costs.